COMMENTARIES

ON THE

INDIAN PENAL CODE.

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INDIAN PENAL CODE

(ACT XLV OF 1860.)

BY

JOHN D. MAYNE, ESQ.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

TENTH EDITION.

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PREFACE TO THE TENTH EDITION.

The present edition has been carefully revised throughout. The most recent English and Indian decisions are incorporated, and considerable additions have been made to the notes.

JOHN D. MAYNE.

1, Crown Office Row, Temple.
November 1878.

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Mad. Jur.	Madras Jurist.
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M. & G.	Manning and Granger's Reports.
Mac.Naght. M. L.	Macnaghten's Moohummedan Law, Edition, 1860.
Mood. C. C.	Moody's Criminal Cases.
M. I. A.	Moore's Indian Appeal Cases.
M. Dig.	Morley's Digest of Indian Cases.
N. A.	Nizamut Adawlut Reports, Bengal.
N. W. P.	High Court of the N. W. Provinces at Allahabad 1869—1875.
Phill. Int. L.	Phillimore's International Law.
Q. B.	Queen's Bench Reports.
R. C. C. C. R.	Revenue, Civil and Criminal Reporter (Calcutta.) Criminal Rulings.
R. C. C. Circ.	,, ,, ,, Circulars and Letters.
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R. C. C. Civ.	,, ,, ,, Civil Rulings.
R. J. & P.	Revenue, Judicial, and Police Journal, Calcutta.
Roscoe, N. P.	Roscoe's Nisi Prius. Edition 1851.
Russ.	Russel on Crimes and Misdemeanours, 4th Ed. 1865.
Russ. & R.	Russell and Ryan's Nisi Prius Reports.
Salk.	Salkeld's Reports.
Sav.	Savigny Modern Roman Law.
Sm. L. C.	Smith's Leading Cases. Edition 1867.
Sm. Merc. L.	Smith's Mercantile Law. Edition 1859.
Stark. Pl.	Starkie's Criminal Pleading.
Story. Confl. L.	Story's Conflict of Laws. Edition 1872.
Stra.	Strange's Reports in the King's Bench.
Stra. H. L.	Sir Thomas Strange's Hindu Law. Edition 1830.
Swanst.	Swanston's Reports.

Taunt.................. Taunton's Reports.
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Williams, R. P...... Williams' Treatise on Real Property.
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ERRATA AND ADDENDA.

At page 7, line 22, *for* slaves, *read* slavers.
„ 14, last line but one, *after* special, *add* law.
„ 30, line 24, *after* Act V of 1871, *add* s. 30.
„ 32, „ 31, *for* 58 of 1869, 162 of 1861, *read* 58 of 1861; 69 of 1861.
„ 35, *after* the note to s. 65, *add*

This section has been explained by the High Court of Madras as follows:—

"If imprisonment and fine, and further imprisonment in default of payment of the fine is the sentence, the imprisonment in default cannot exceed one-fourth of the period of imprisonment which the Magistrate is competent to inflict for the offence. But if the sentence is fine only, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence." (1 Mad. L.R. 277.)

At page 53, last line of fifth paragraph, *for* 52, *read* 50.
„ 62, first line of third paragraph, *for* while, *read* where.
„ 71, line 15, *for* act, *read* fact.
„ 73, fourth line from the bottom, *for* ascending, *read* assenting.
„ 92, last line, *for* 100, *read* 98.
„ 106, last line of first paragraph, *for* 113, *read* 111.
„ 108, line 22, *for* more, *read* most.
„ 112, last line of s. 124A, *for* 116, *read* 114.
„ 121, in the note to s. 151, *for* 121, *read* 119.
„ 146, in the first line of the notes to ss. 179 & 180, *for* 145, *read* 143.
„ 164, last line of first paragraph, *for* 168, *read* 167; and in the first line of the last paragraph, *for* plain, *read* plaint.
„ 166, line 6, *for* 56, *read* 58.
„ 173, in the third line of the note to s. 203, *for* 144, *read* 148
„ 179 and 183, after Cr. P.C. s. 468, *for* 168, *read* 167.
„ 199, line 3, *for* 145, *read* 143.
„ 240, note to s. 291, *read* Cr. P.C. ss. 518, 521, *ante* pp. 154, 155.
„ 242, first line of note to s. 294A, *for* 116, *read* 114.
„ 257, last line of third paragraph, *for* 57, 59, 79, *read* 55, 60, 81
„ 260, first line of note to s. 304A, *for* 116, *read* 114.

At page 262, fourth line of the sixth paragraph, *for* which was known, *read* which was not known.

„ 300, in the first line of the fourth paragraph, *for* 65, *read* 64.

„ 308, correct line 21, so as to read, goods which are the property of the master are in his possession, &c.

„ 321, 322, 323, after Cr. P.C. s. 89, *for* 108, *read* 106.

„ 335, last line, *for* 52, *read* 54.

„ 365, last line, *for* 169, *read* 167.

„ 373 and 374, after Cr. P.C. s. 469, *for* 366, *read* 365.

„ 376, line 3, *for* 77, *read* 78.

„ 406, line 6, *for* continued, *read* contained.

„ 426, first line, *for* 39, *read* 38.

„ 428, third line from the bottom, *for* 10, *read* 6.

„ 430, line 24, *add* the word confer before on.

Special and Local Acts.

It may be useful to append a list of some of the principal Acts which will still remain in force under this section. The list does not profess to be exhaustive.

Abkaree, Bengal Acts 10 of 1871. 2 of 1876 (Bengal)
Bombay „ 5 of 1878 City of Bombay, 1 of 1878, (Bombay)
Madras „ 19 of 1852, 3 of 1864, (Madras.)
Animals, Cruelty to „ 1 of 1869, (Bengal.)
Arms, „ 11 of 1878.
Arms and Ammunition, „ 31 of 1860, 6 of 1866.
Army, tampering with, „ 14 of 1849.
„ Mutiny in Native, „ 25 of 1857.
„ Mutiny and desertion in European, serving in India, Act 11 of 1856, 26 & 27 Vict. c. 48.
„ Mutiny and desertion. Her Majesty's Forces. A new Act is passed each year.
Articles of War for Native Troops, Act 5 of 1869.
Boats, Acts 4 of 1842, (Madras), 28 of 1858, 1 of 1877 (Madras.)
Breaches of contract, by Artificers, Acts 13 of 1859, 3 of 1863, (Madras.)
British Burmah Municipal, Act 7 of 1874.
Burmah Ferries, Act 2 of 1873.
Canals and Ferries, Act 1 of 1870, (Madras), 4 of 1878 (Madras.)
Cattle Killing, Bengal, Act 4 of 1856.
Cattle Trespass, Act 1 of 1871.
Census, Act 11 of 1863, (Bombay.)
Central Provinces Municipal, Act 11 of 1873.
Coffee Stealing Prevention Act, 8 of 1878, (Madras)
Coin, 16 & 17 Vict. c. 48.
Conservancy of Towns, Acts 14 of 1856, 3 of 1864, (Bengal), 9 of 1865, and 9 of 1867, (Madras), 3 of 1871, (Madras.)
Contagious Diseases, Acts 14 of 1868, 6 of 1867, (Bombay.)
Contract, breaches of, Act 13 of 1859.
Coroners, Act 4 of 1871.
Cotton Frauds, Act 9 of 1863, (Bombay.)
Courts Martial, 7 & 8 Vict. c. 18.
Criminal Tribes, Acts 27 of 1871, 7 of 1876.
Crimping, Act 24 of 1852.
Customs, Consolidation, Acts 23 of 1864, 25 of 1865, 18 of 1866, 17 of 1867, 8 of 1878.
Distress, Act 1 of 1875.
Dramatic Performances, Act 19 of 1876.
East Indian Irrigation, Act 8 of 1867, (Bombay.)
Emigration, Acts 3 of 1863, (Bengal), 5 of 1866, (Madras), 7 of 1871, 3 of 1876, 5 of 1877.
Escape from Gaol, Acts 17 of 1860, 9 of 1866, (Bengal.)

Eunuchs, Acts 27 of 1871, 7 of 1876.
European British Subjects, Act 22 of 1870.
European Vagrancy, Act 9 of 1874.
Excise, Acts 16 of 1863, 10 of 1871.
Female Infants, Act 8 of 1870.
Ferries, Act 2 of 1868, (Bombay,) 2 of 1878, Bombay.
Foreigners, Act 3 of 1864.
Foreign Jurisdiction and Extradition, Act 11 of 1872, 33 & 34 Vict. c. 52.
Foreign Recruiting Act, Act 4 of 1874.
Forests, Act 7 of 1878.
Furnaces, Acts 8 of 1862, (Bombay), 2 of 1863, (Bengal.)
Gambling, Acts 3 of 1866, (Bombay), 2 of 1867, (Bengal.)
" in N. W. Provinces, Act 3 of 1867.
Hackney Carriages, Acts 6 of 1863, (Bombay), 5 of 1866, (Bengal.)
Howrah Bridge, Act 19 of 1871, (Bengal.)
India, Government of, 21 & 22 Vict. c. 106.
" " 22 & 23 Vict. c. 41.
Indian Ports, Act 12 of 1875.
Inland Customs, Act 8 of 1875.
Insolvency, 11 Vict. c. 21.
Irrigation Works, Act 1 of 1858, 3 of 1876 (Bengal.)
Jails, discipline of, Acts 4 of 1862 & 2 of 1864, (Bengal.)
License Act, 1 of 1878 (Bengal)
License Act, 3 of 1878, (Bombay), 3 of 1878, (Madras.)
Local Funds, Act 4 of 1871, (Madras.) 1 of 1878, (Madras)
Malabar, Mopla Outrages, Act 20 of 1859.
Malabar, Offensive Weapons in, Act 24 of 1854.
Marines, Royal, 23 Vict. c. 10, 28 Vict. c. 12.
Markets and Fairs, Act 4 of 1862, (Bombay.)
Marriages in India, 14 & 15 Vict. c. 40, Acts 25 of 1864, 3 & 15 of 1872.
Martial Law, Reg. 7 of 1808.
Merchant Shipping, 17 & 18 Vict. c. 104, 18 & 19 Vict. c. 91, 25 & 26 Vict. c. 63, 30 & 31 Vict. c. 124, Acts 1 of 1859, 15 of 1863, 13 of 1876.
Military Cantonments, Acts 22 of 1864, 1 of 1866, (Madras), 3 of 1867, (Bombay.)
Minors, Acts 21 of 1855, 14 of 1858, 9 of 1875.
Municipal Rates, Acts 25 of 1856, 6 of 1863, 18 of 1864, and Calcutta Municipal Act, 4 of 1876, (Bengal), Bengal Municipal Act, 5 of 1876, (Bengal), 9 of 1865, 2 of 1865 and 4 of 1867, (Bombay), 5 of 1878, (Madras.)
Native Emigrants to Burmah, Act 3 of 1876.
Native Passenger Ships, Act 8 of 1876.
Navy, Royal, 27 & 28 Vict. c. 119.
" Indian, Desertion from, Act 3 of 1855.
North West Provinces and Oudh Municipalities, Act 15 of 1873.
" " Village and Road Police, Act 16 of 1873.
Opium, Acts 23 of 1876, 1 of 1878.
Oriental Press, Act 9 of 1878.
Panjab Municipalities, Act 4 of 1873.
Panjab Murderous Offences, Act 9 of 1877.
Panjab, Outrages in the, Act 21 of 1867.

Panjab, Canal and Drainage, Act 30 of 1871.
Paper Currency, Acts 3 of 1871, 16 of 1874.
Passengers in Ships, 15 & 16 Vict. c. 44.
" " 16 & 17 Vict. c. 84.
" " Acts 1 of 1857, 21 of 1858, 2 of 1860, 8 of 1876.
Penal Servitude, Acts 24 of 1855, 14 of 1870, 5 of 1871, 12 of 1873.
Petty Offences, Madras, Acts 21 of 1839, 3 of 1842.
Petty Sessions, Act 4 of 1866, (Bombay.)
Pier, Acts 5 of 1863, (Madras), 7 of 1871, (Madras.)
Poisons, Act 8 of 1866, (Bombay.)
Police in Bengal, Acts 6 of 1867 and 6 of 1868, (Bengal.)
" in Bombay, Acts 7 & 8 of 1867, (Bombay), 1 of 1876, (Bombay.)
" in Calcutta, Acts 2, 4 and 8 of 1866, (Bengal.)
" General, Act 5 of 1861.
" in Madras, Acts 24 of 1859, 5 of 1865, and 8 of 1867, (Madras.)
Ports, Acts 22 of 1855 and 19 of 1860, 1 of 1864 and 7 of 1867, (Madras), 3 of 1867, (Bengal.)
Post Office, Act 14 of 1866.
Presidency Magistrates, Act 4 of 1877.
Prisons, Act 26 of 1870.
Quarantine, Act 1 of 1870.
Railway, Acts 18 of 1854, 52 of 1860, 25 of 1871.
" Servants, Act 31 of 1867.
Registration, Act 3 of 1877.
Salt, Acts 6 of 1871, (Madras), 8 of 1875, 18 of 1877, 2 of 1878, (Madras), 6 of 1878, (Madras.)
Saltpetre, Acts 31 of 1861, 33 of 1867.
Sanitary Regulation, Act 6 of 1867, (Bombay.)
Sarais, Regulation of, Act 22 of 1867.
Sea Customs, Act 8 of 1878.
Shipping, Acts 10 of 1841, 3 of 1867, (Bengal.)
Signals on the Hooghly, Act 1 of 1862, (Bengal.)
Slave Trade, Act 39 & 40 Vict. c. 46.
Soldier's Arms, Act 7 of 1867.
Spirituous Liquors, Act 9 of 1867, (Bombay.)
Stamps, Acts 10 of 1862, 18 of 1869, 14 of 1870, 16 of 1874.
State Offences, Act 11 of 1857.
" Prisoners, Act 3 of 1858.
Steam Vessels, Survey of, Acts 2 of 1864, (Bombay), 5 of 1862, and 1 of 1868, (Bengal.)
Steam Boilers, Act 6 of 1864, (Bengal.)
Telegraph, Act 1 of 1876.
Tolls on Canals, Act 4 of 1864, (Bengal.)
" on the Ganges, Act 1 of 1867.
Trades and Professions, taxing, Act 2 of 1869, (Bombay.)
Vaccination, Act 1 of 1877, (Bombay.)
Volunteer Corps, Act 20 of 1869.
Weights and Measures, Acts 11 of 1870, 31 of 1871.
Whipping, Act 6 of 1864.

ACT No. XLV OF 1860.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(*Received the assent of the Governor-General on the 6th October,* 1860.)

THE INDIAN PENAL CODE.

CHAPTER I.

Preamble.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

Title and extent of operation of the Code.

1. This Act shall be called THE INDIAN PENAL CODE, and shall take effect on and from the 1st day of May, 1861, throughout the whole of the Territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

Now extended to that Settlement by Act V of 1867.

Punishment of offences committed within the said Territories.

2. Every person shall be liable to punishment under this Code and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said Territories on or after the said 1st day of May, 1861.

This date was by Act VI of 1861 altered to the 1st day of January, 1862, and every part of the Code in which the 1st day of May, 1861, is mentioned, is to be construed as if the words "the 1st day of January, 1862," had been used instead.

Punishment of offences committed beyond, but which by law may be tried within the Territories.

3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said Territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said Territories, in the same manner as if such act had been committed within the said Territories.

Punishment of offences committed by a servant of the Queen within a Foreign allied State.

4. Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said 1st day of May, 1861, within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India.

The object of this Chapter is to substitute the Penal Code for the existing Criminal law of India. That law, however, is not repealed except by implication, and in cases to which the provisions of this Code apply. The frame of this clause is thus explained by the Commissioners in their Second Report, 1847, §§ 536-538.

"We do not advise the general repeal of the Penal Laws now existing in the territories for which we have recommended the enactment of the Code. We think it will be more expedient to provide only that no man shall be tried or punished (except by a Court Martial) for any acts which constitute any offence defined in the Code, otherwise than according to its provisions. It is possible that a few actions which are punishable by some existing law, and which the Legislature would not desire to exempt, may have been omitted from the Code. And, in addition to this consideration, it appears to us that actions which have been made penal on special temporary grounds, ought not to be included in a general Penal Code intended to take its place amongst the permanent institutions of the country."

The object is carried out as regards offences committed within the territories by s. 2, which is explicit enough.

With regard to offences committed beyond those territories the Code is less clear. Section 3 enacts that where a person might, by virtue of any Act of the Legislative Council of Calcutta, be tried in British India for an offence committed out of British India, he is to be dealt with according to this Code. Section 4 contains a similar provision as to

servants of the Queen who commit offences within the dominions of allied Princes. But neither of these sections covers an equally important class of cases, that, namely, of persons who are not servants of the Queen, and who are triable in British India, not by virtue of any Act of the Legislative Council, but under Acts of Parliament. These would seem to be still left under the old law, which would in general be the English Criminal Law. On the other hand by s. 40 of Chapter II, the word "offence" is made to denote "a thing made punishable by this Code," except in certain special cases therein referred to. It seems difficult to understand why the restrictive words "by virtue of any Act of the Legislative Council of Calcutta" were introduced.

I shall now point out the law which governs the trial of offences committed beyond the limits of British India.

Offences committed beyond the limits of British India may either be tried in India, or the offender may be given up for trial in the country where his crime was committed.

Cases of the latter class will now be disposed of under the Foreign Jurisdiction and Extradition Act XI of 1872. It seems to contemplate two distinct cases. *First*, where the offence has been committed in any of those States specially connected with India, in which the Governor-General in Council has a power and jurisdiction which is exercised by a Political Agent (s. 3). *Secondly*, where the offence is committed in some State where there is no such Indian Jurisdiction, or in some other part of Her Majesty's Dominions.

First.—"When an offence has been committed or is supposed to have been committed, in any State against the law of such State by a person not being an European British subject, and such person escapes into, or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place in such State, and to a person to be named in the warrant, if such Political Agent thinks that the offence is one which ought to be enquired into in such State, and if the act, said to have been done, would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the second Schedule hereto, or under any other section of the said Code, or any other law, which may from time to time be specified by the Governor-General in Council by a notification in the Gazette." (s. 11.)

The sections mentioned in the second Schedule are the following; 230 to 263 both inclusive (coin); 299—304 (homicide); 307 (attempt to murder); 310, 311 (Thugs); 312—317 (injuries to infants); 323—333 (hurt); 347, 348 (wrongful confinement); 360—373 (kidnapping); 375—377 (rape and unnatural offences); 378—414 (offences against property); 435—440 (mischief); 443—446 (house-trespass); 464—468 (forgery); 471—477 (frauds in regard to documents.)

"Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant." (s. 12.)

"Such Political Agent may either dispose of the case himself, or may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the

offence was committed, if he is generally or specially directed to do so by the Governor-General in Council, or by the Governors in Council of the Presidency of Fort St. George or Bombay respectively." (s. 13.)

It will be observed that the Political Agent is not authorised to demand the extradition of a European British subject. He must apparently be dealt with in India under s. 9.

Secondly.—"Whenever a requisition is made to the Governor-General in Council or any Local Government by or by the authority of the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor-General in Council or such Local Government as the case may be, may issue an order to any Magistrate, who would have had jurisdiction to enquire into the offence, if it had been committed within his local jurisdiction, directing him to enquire into the truth of such accusation. The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall enquire into the truth of such accusation; and shall report thereon to the Government by which he was directed to hold such enquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person, and for his delivery at a place and to a person to be named in such warrant." (s. 14.)

It is to be remarked that this section contains no limitation as to the person who may be delivered up, or the offence in respect of which he may be demanded. When once given up, he is absolutely at the disposal of the Government to which he is surrendered.

The Act goes on to provide that

"This section shall not affect the provisions of any law or treaty, for the time being in force, as to the extradition of offenders; but the procedure provided by any such law or treaty shall be followed in every case to which it applies." (s. 14.)

The Extradition Act, 1870 (33 & 34 Vict. c. 52) is in terms only applicable to the United Kingdom, but s. 17 provides that it may be extended to any British possession (s. 26) by order in Council, and the extending order may either suspend any existing law on the subject which prevails in such possession or may direct that such law shall have effect as part of the Extradition Act, either with or without alteration. (s. 18.)

The same Act contains provisions which practically make all warrants or depositions prove themselves, if purporting to be issued by the authorities of the country which demands the offender, and to be signed by a Judge, Magistrate or officer of the foreign State, whose signature is either proved by oath, or authenticated by an official seal, of which all Courts are to take notice. (s. 15). The Indian Evidence Act (s. 82), enables similar documents to be proved in the same way, if produced in India.

As regards the trial in India of offences committed out of India, it must be remembered that the Indian Courts are essentially Courts of local jurisdiction, and have no power to try any person for a crime committed out of India, unless by some special provision authorising them to do so. Where such a crime has been committed, and the

offender is in India, it is necessary to enquire; first, whether he is triable at all; secondly, if so, by what Court; thirdly, what law is to be applied to ascertain his offence; and lastly, how is the penalty for that offence to be determined.

First.—As a general rule no Municipal tribunal has jurisdiction over a foreigner in respect of an offence committed in a foreign State. And it makes no difference that his crime takes effect, or has a continuing operation within the Municipal limits. Accordingly where a subject of the Kolhapur State, which is foreign territory, instigated in that State a murder which was committed in Satara, it was held that his conviction in Satara must be annulled. (10 Bomb. H.C. 356). And so it has been held that notwithstanding the provisions of the Crim. P.C. (ss. 66 *illus. b* and 67 *illus. f.*), a foreigner who was found in possession of stolen property in India could not be tried, if the theft or guilty receipt had taken place out of India. (4 Bomb. H.C. Cr. 38; 1 Mad. L.R. 171.) Till very lately it was generally supposed that for this purpose the jurisdiction of every State extended to a distance of three miles from its own shore. This doctrine, however, after undergoing an elaborate discussion, has been over-ruled by the recent case of Reg. *v.* Keyn, (2 Q.B.D. 90; 2 Ex. D. 63.) It must therefore now be taken that as regards foreigners, and apart from special statutory jurisdiction, or any of the special circumstances about to be mentioned, the fact that the crime was committed within that distance from the sea coast makes no difference. A foreign vessel is part of the State to which it belongs. Therefore, where a blow was inflicted by one foreigner upon another foreigner on board a foreign vessel on the high seas and even where the injury was inflicted by a foreigner who was upon a foreign ship upon an English man who was upon an English ship, both being on the high seas: it was held that the English Court had no jurisdiction, though the death occurred, and the prisoner was in custody within its limits. (Reg. *v.* Lewis, 26 L.J.M.C. 104; D. & B, 182; Reg. *v.* Keyn, ub. sup.) But where a foreign vessel actually comes within the territorial limits of another State, as for instance, by entering a harbour or a river, it loses its foreign territorial character, and becomes subject to the jurisdiction of the State which it enters, unless it is a ship of war. In the latter case, by international usage it retains its foreign character. (Reg. *v.* Keyn, ub. sup.; 1 Phill. Int. L. 366.) In no case does the protection given to foreigners or foreign ships apply to piracy, because a pirate is the common enemy of mankind, and sets his own nationality at defiance, just as much as he does that of other States.

As regards those who are within British jurisdiction, numerous enactments apply. One is s. 4 of the Penal Code, as to which it is only necessary to refer to s. 14, which defines the words "Servant of the Queen." This provision is extended by Act XI of 1872, s. 9, which declares that "all British subjects, European and Native, in British India, may be dealt with, in respect of offences committed by them in any Native State, as if such offences had been committed in any place within British India in which any such subject may be or may be found." But where the offence was committed in a Native State which possesses a Political Agent, he

must certify that the offence is one which ought to be tried in India. Any proceedings taken thereupon will be a bar to proceedings for the same offence in the Native State.

A further and special provision is contained in the Slave Trade Act (39 & 40 Vict. c. 46, s. 1) which makes the commission or abetment of offences under ss. 367—370 and 371 of the Indian Penal Code, punishable in the same way as if they had been committed in any place within British India in which the offender may be found, provided he was a subject of Her Majesty, or of any allied Indian Prince, even though the offence itself was committed on the high seas, or in any part of Asia or Africa specified by order of Council. Special powers of issuing commissions to obtain evidence are given to the High Courts under s. 3.

Another wide class of jurisdiction over offences committed out of India is the Admiralty jurisdiction possessed by the High Courts. It was originally conferred upon the Supreme Courts by their respective Charters, and by 33 Geo. III, c. 52, s. 156, and 33 Geo. III, c. 155, s. 110, and was continued to the High Courts by 24 & 25 Vict. c. 104, s. 9, and by ss. 32 & 33 of the Letters Patent of 1865. The effect of these Statutes is to confer upon those Courts the same jurisdiction as is possessed by the Admiralty Court of England in respect of all offences, committed in all places, and by all persons over whom that Court would have had jurisdiction.

Admiralty jurisdiction is entirely confined to the water. No crime committed on land comes within its cognizance. It applies in the following instances:—

1. To all subjects of the Queen who commit any offence upon the high seas, or in any port, creek or river, of a tidal character, which may be considered as merely an extension of the sea. Where an English sailor was charged with stealing tea out of a vessel which lay in the river at Wampu in China, twenty or thirty miles from sea, it was held that the Central Criminal Court in London, which exercises Admiralty functions, had jurisdiction over the offence, though no evidence was offered to show whether the tide flowed where the vessel lay; "The place being one where great ships go." (R. *v.* Allen, 1 Mood. C.C. 494; Reg. *v.* Bruce, 2 Leach, 1,098.) And so Wood, V.C., said (29 L.J. Ch. 879) "There cannot be any doubt or question that directly low water mark is passed, a vessel is on the high seas." (See too the Eclipse, 31 L.J. Adm. 201.)

But Admiralty jurisdiction only exists where the ordinary Criminal Courts have no jurisdiction. Therefore they and not the Admiralty Court have jurisdiction when the offence is committed in rivers or arms or creeks of the sea within the bodies of counties, though within the flux and reflux of the sea; as for instance, in the Bristol Channel. (Reg. *v.* Cunningham, 28 L.J.M.C. 66; 1 Bell, C.C. 66.)

2. To all persons, whether subjects or foreigners, who commit any offence, on board a British ship, or a Ship lawfully in British possession, as for instance, a prize of war, when such vessel is on the high seas, or in any tidal port, creek, or river. (Reg. *v.* Serva, 2 C. & K. 53; 1 Phill. Int. L. 377.)

In a recent case, (Reg. *v.* Anderson, 1 L.R.C.C. 161) an American citizen was indicted at the Central Criminal Court for a murder, committed by him on a British vessel in which he was serving, and which at the time was in the river Garonne, 90 miles from the sea, and of course in the heart of France. It was held that he was liable to the Admiralty jurisdiction at common law, independently of the provisions of the Merchant Shipping Act, s. 267. (*vide* p. 9.) The Court treated it as perfectly plain that the place where the ship lay was within Admiralty jurisdiction being "in a navigable river, in a broad part of it below all bridges, and at a point where the tide ebbs and flows, and where great ships lie and hover." (p. 167.) As to the nationality of the prisoner that was immaterial, since as long as he was on a British ship, he was on British territory, under the protection of, and bound to render obedience to British laws. (See Marshall *v.* Murgatroyd, 6 L.R.Q.B. 31.)

But where a foreigner is illegally and against his own consent in custody on board of a British ship, or is in custody, however legally, merely by virtue of superior force, as in the case of a prisoner of war, no acts done by him merely for the purpose of effecting his escape are criminal offences. This point was very much argued in the case of Reg. *v.* Serva, where the prisoners were captured as slaves, and rose upon the crew of the British cruiser. The point was not decided however, as the Court acquitted them on the ground that the ship in which the killing took place was not shown by law to have been a British ship, and therefore that the Court had no jurisdiction. Baron Alderson's inclination seemed to be against the right of the prisoners to slay their captors. In one place he said:—

"If these persons had been brought on board 'The Wasp,' and had there conspired to kill the English and had done so, would not that have been murder?" (2 C. & K. 64); and in another place he observed—

"If a prisoner of war killed the captain who carried him on board his ship, would he not be triable here?—and yet, he does not come on board voluntarily." (Ibid. 69, and see arguments, pp. 76, 89, 93, 95.)

The question however is now settled, as I have stated the law above, by the decision in Reg. *v.* Sattler, D. & B. 539; 27 L.J.M.C. 50. There, a criminal who had been arrested in Hamburgh, and was in irons on board a English steamer, shot the officer, who afterwards died of his wound. Lord Campbell, C.J. during the arguments of the case said—

"If a prisoner of war who had not given his parol, killed a sentinel in trying to escape, it would not be murder."

In giving the judgment of the full Court, (fourteen Judges, among whom the heads of the three Courts were present) he said—

'Here a crime is committed by the prisoner on board an English ship on the high seas, which would have been murder if the killing had been by an Englishman in an English country; and we are of opinion that under those circumstances, whether the capture at Hamburgh, and the subsequent detention were lawful or unlawful, the prisoner was guilty of murder, and of an offence against the laws of England; for he was in an English ship, part of the territory of England, entitled to the protection of the English law, and he owed obedience to that law; and he committed the crime of murder—that is to say, he shot the officer, not with the view of obtaining his liberation, but from revenge and malice prepense.' (D. & B. 547.)

In the case of Attorney-General for Hong Kong *v.* Kwok-A-Sing, the prisoner was one of a number of Chinese Coolies who, while on a voyage from China to Peru in a French emigrant ship, killed the captain and several of the crew and took the ship back to China. The Chief Justice of Hong Kong released the prisoner on habeas corpus on the ground, *inter alia*, that the ship was a slave ship, and that the Coolies were justified in killing the captain and crew for the purpose of obtaining their liberty. This finding was reversed on appeal by the Judicial Committee. Their Lordships said,

"There was evidence from which it might be inferred that some of the Coolies had, by fraud or by threats on the part of other Chinese, been induced to go to the barracoon and embark on board the ship against their will. They appear, however, all to have professed to the Portuguese authorities at Macao that they were willing emigrants; and there was, in their Lordships' opinion, no sufficient evidence upon the depositions that either the Portuguese authorities at Macao, or the French captain or crew, were any parties to compelling any of the Coolies to leave China against their will."

The Committee were accordingly of opinion that the offences committed by the prisoner, assuming the evidence to be true, were those of murder under the French municipal law, and piracy *jure gentium*. (5 L.R.P.C. 180, 199.)

The mere fact that the ship has a certificate of registry as a British ship is *primâ facie* evidence that she is such. But the presumption may be rebutted, as for instance, by showing that her owner was an alien. (Reg. *v.* Bjornson, 34 L.J.M.C. 180.) On the other hand, a ship may be shown by evidence to be a British ship, though she is not registered as such. (Reg. *v.* Sven. Seberg, 1 L.R.C.C. 264.)

3. All cases of piracy, by whomsoever and wherever committed, are within Admiralty jurisdiction, for pirates are common enemies, and may be tried whenever they are found. (1 Phill. Int. L. 379.)

"Piracy, is an assault upon vessels navigated on the high seas, committed *animo furandi*, whether the robbery or depredation be effected or not, and whether or not it be accompanied by murder or personal violence."—*Ibid.*

And so in the case of Kwok-A-Sing, the Judicial Committee cited with approval the language of Sir Charles Hedges, who says, "Piracy is only a sea term for robbery, piracy being a robbery within the jurisdiction of the Admiralty." (5 L.R.P.C. 199.)

And where the ships were not seized upon the high seas, but were carried away and navigated by the very persons who originally seized them, Dr. Lushington laid it down, that the possession at sea was a piratical possession, and the carrying away the ships on the high seas were piratical acts. (Case of the Magellan Pirates, 1 Phill. Int. L. 391.) So also it is piracy, where persons who have lawfully entered a ship as passengers, crew or otherwise, afterwards feloniously carry and sail away with the ship itself, or take away any merchandise, or goods, tackle, apparel or furniture out of it, thereby putting the Master of such ship and his company in fear. (Per Sir Leoline Jenkins, 1 Phill. Int. L. 384.)

Till lately the Mofussil Courts have had no similar jurisdiction. Now by the combined effect of 12 & 13 Vict. c. 96 and 23 & 24 Vict. c. 88, s. 1, it is enacted,

"That if any person in British India shall be charged with the commission of any treason, piracy, felony, robbery, murder, conspiracy or other offence, of what nature soever, committed upon the sea or in any haven, river, creek or place where the Admiral has power, authority or jurisdiction, or if any person charged with the commission of any such offence upon the sea, or in any such haven, river, creek or place, shall be brought for trial to British India, then and in every such case all Magistrates, Justices of the Peace, public prosecutors, juries, judges, Courts, public officers, and other persons in India shall have and exercise the same jurisdiction and authorities for inquiring of, trying, hearing, determining and adjudging such offences, and they are hereby respectively authorised, empowered and required to institute and carry on all such proceedings for the bringing of such person so charged as aforesaid to trial, and for and auxiliary to and consequent upon the trial of any such person for any such offence wherewith he may be charged as aforesaid, as by the law of British India would and ought to have been had and exercised, or instituted and carried on by them respectively if such offence had been committed, and such person had been charged with having committed the same, upon any waters situate within the limits of British India, and within the limits of the local jurisdiction of the Courts of Criminal Justice." (And see Cr. P.C., s. 157, ante p. 4.) "Provided always, that if any person shall be convicted before any such Court of any such offence, such person so convicted shall be subject and liable to, and shall suffer all such and the same pains, penalties and forfeitures as by any law or laws now in force persons convicted of the same respectively would be subject and liable to, in case such offence had been committed, and were inquired of, tried, heard, determined and adjudged in England, any law, statute or usage to the contrary notwithstanding." (12 & 13 Vict. c. 96, ss. 1, 2.)

Further provisions of a similar character are contained in the Merchant Shipping Act, and the subsequent amending Acts.

By the Merchant Shipping Act, 17 & 18 Vict. c. 104, s. 267,

"All offences against property or person committed in or at any place ashore or afloat out of Her Majesty's Dominions (see s. 2) by any Master, Seaman or Apprentice, who at the time when the offence is committed is, or within three months previously has been, employed in any British Ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishment respectively, and be enquired of, heard, tried, and determined and adjudged in the same manner, and by the same Courts, and in the same places, as if such offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England." (See as to such costs, 7 Geo. IV, c. 64, s. 27, and 7 & 8 Vict. c. 2, s. 1.)

Complaints of offences coming under the above section may be enquired into on oath by any British Consular Officer, who may thereupon send the offender in custody "to the United Kingdom, or to any British possession in which there is a Court capable of taking cognizance of the offence, in any ship belonging to Her Majesty or to any of Her subjects, to be there proceeded with according to law." The master of the ship "shall on his ship's arrival in the United Kingdom, or in such British possession as aforesaid, give every offender so committed to his charge into the custody of some Police Officer or Constable, who shall take the offender before a Justice of the Peace or other Magistrate empowered by law to deal with the matter, and such Justice or Magistrate shall deal with the matter as in cases of offences committed on the high seas." The expense of imprisoning the offender, and of conveying him and his witnesses to the place of trial shall be part of the costs of prosecution, or be paid as costs incurred on account of seafaring subjects of Her Majesty

left in distress in foreign parts. (s. 268. See as to last clause, ss. 211-213.) See as to the admissibility of depositions where the witness is not producible, s. 270.

In a recent case it was intimated by the Judges that this Act would apply to an American citizen, who was serving on a British ship, at the time the offence was committed. It was not however necessary to decide the point, as the jurisdiction at common law was made out. (Reg. *v.* Anderson, 1 L.R.C.C. 161.)

This statute only applies to Masters, Seamen and Apprentices on British ships. But it applies in the case of a Ship which is in fact a British ship, though it is not registered under the Merchant Shipping Act. (Reg. *v.* Sven. Seberg, 1 L.R.C.C. 264.)

Stat. 18 & 19 Vict. c. 91, s. 21, provides that

"If any person being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, or in any foreign port or harbour, or if any person not being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any Court of Justice in Her Majesty's dominions which would have had cognizance of such crime or offence, if committed within the limits of its ordinary jurisdiction, such Court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits. Provided that nothing contained in this section shall be construed to alter or interfere with the Act 12 & 13 Vict. c. 96." (See its provisions, p. 9.)

This Statute is to be taken as part of the Merchant Shipping Act, 1854, (17 & 18 Vict. c. 104) by s. 2 of which it is provided that "Her Majesty's Dominions" includes all territories (then) under the Government of the E. I. Company.

The first question upon this Act is as to the meaning of the words "British subject." These words have got two perfectly distinct meanings. One is a person who owes allegiance to the British Crown, by birth or naturalization. (Reg. *v.* Manning, 2 C. & K. 900.) The other is a person who by reason of his British origin is to a certain degree exempt from the Criminal jurisdiction of the Mofussil Courts. (See Book II. Want of jurisdiction.) The former I conceive to be the meaning in the Statute quoted. It will be observed that the Act is an amendment of the Merchant Shipping Act, which applies generally to every part of the British dominions. It seems clear that the word British when qualifying *subject* must mean the same thing as it does when qualifying *Ship*, and in either case must be taken simply as opposed to foreign. Accordingly, upon the construction of another Criminal Statute, 9 Geo. IV, c. 31, s. 7, the words His Majesty's subject, and British subject, were treated by the Court as synonymous terms, in dealing with a Native of Malta. (Reg. *v.* Azzopardi, I. C. & K. 203-207. See too Reg. *v.* Manning, 2 C. & K. 900.) The restricted meaning of the term would become important for the first time when the question arose, what Court in India was to try the prisoner? For instance, suppose an English Sailor and a Malabar Coolie returning from the West Indies join in robbing a passenger on board a British ship while it is in a foreign port, and are arrested when they reach India; both would be amenable to the jurisdiction of the Indian Courts, as being in the

general sense British subjects. But the Englishman as being a British subject in the restricted sense, could in general, only be tried before the High Court, while the Coolie might be tried by any Court in the Mofussil within whose jurisdiction he was found, provided it was capable of taking cognizance of theft.

A prisoner is "found within the jurisdiction" under the meaning of this Statute, when he is actually present there, whether he came voluntarily or was brought by force; and even the fact of his having been illegally put on board the ship where he committed the crime, makes no difference in the criminality of the act, or the jurisdiction of the Court to try it. (Reg. *v.* Lopez, 27 L.J.M.C.; 48 D. & B. 525.)

Stat. 30 & 31 Vict. c. 124 (the Merchant Shipping Act of 1867) is to be construed with and as part of the Merchant Shipping Act of 1854. By s. 11 it is provided that

"If any British subject commits any crime or offence on board any British Ship, or on board any foreign ship to which he does not belong, any Court of Justice in Her Majesty's Dominions, which would have had cognizance of such crime or offence if committed on board a British Ship within the limits of the ordinary jurisdiction of such Court, shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid."

Secondly.—In general the jurisdiction over offences committed out of India will depend upon the nationality of the offender. If he is a European British subject, he can only be tried in the manner and by the Courts which have jurisdiction over persons of his class. (See Cr. P.C., Chap. VII). If he does not come under that term, he may be tried by any Court within whose limits he is found, which has jurisdiction over his offence.

Where a person charged under Act 12 & 13 Vict. c. 96 has, and claims, the privilege of being tried by the High Court,

"The Court exercising criminal jurisdiction shall certify the fact and claim to the Governor of such place, or chief local authority thereof, and such Governor or chief local authority shall thereupon order and cause the said person charged to be sent into custody to such one of the Presidencies as such Governor shall think fit, for trial before the Supreme (High) Court of such Presidency, and the said Supreme Court, and all public officers and other persons in the Presidency, shall have the same jurisdiction and authorities, and proceed in the same manner in relation to the person charged with such offence, as if the same had been committed or originally charged to have been committed within the limits of the ordinary jurisdiction of such Supreme Court." (23 & 24 Vict. c. 88, s. 2.)

Thirdly.—The law which is to be applied to extra-territorial offences will depend upon the Statute under which they are tried. In cases which come under s. 4 of the Penal Code, s. 9 of the Foreign Jurisdiction Act (XI of 1872) and s. 1 of the Slave Trade Act (39 & 40 Vict. c. 46) the law applicable to the case will be the Indian Penal Code. In cases coming within the Admiralty jurisdiction of the High Courts, the Courts were directed to act "according to the laws and customs of the Admiralty of England" (33 Geo. III, c. 52, s. 156); that is according to English Criminal law. The same rule is expressly laid down in the Merchant Shipping Act of 1854 (17 & 18 Vict. c. 104, s. 267.) The two later Amending Acts are less distinct upon the point. Stat. 18 & 19 Vict. c. 19, s. 21 says nothing

as to the law which is to govern the case. But the concluding proviso incorporates Act 12 & 13 Vict. c. 96, which directs that the person convicted should be punished in the same manner as by any law now in force he would be liable, if the offence had been committed and tried in England. This apparently makes the English law be the rule for the substance of the offence as well as for its penalty. The last of the three Acts (30 & 31 Vict. c. 124, s. 11) makes no reference, expressly or by implication, to English law. But it was held by the Bombay High Court that inasmuch as the Act was to be read with the Merchant Shipping Act, 1854, and the amending Act of 1855, (18 & 19 Vict. c. 91) and contained no recital or evidence of any intention to depart from the well-marked policy of the principal and amending Acts, in prescribing the English law as the substantive law by which cases should be decided, it did not authorise a conviction under the Penal Code of a British subject who had burnt a British ship on the high seas, upwards of fifty miles from the coast of India. The word "determine" was not in the opinion of the Court of itself any sufficient indication of such an intention, contrary as it would be to the Merchant Shipping Code, which the principal and amending Acts form. (Reg. *v.* Elmstone, 7 Bomb. C.C. 128.)

The same principle has been applied to cases under the Statute 12 & 13 Vict. c. 96 as extended to India, which has been held to have the effect of incorporating the Indian Procedure with the English Criminal law.

Accordingly in a case in Bengal, a prisoner, a British subject, was charged under 1 Vict. c. 85, s. 2, with feloniously wounding another person on a British ship on the high seas, with intent to disable. The jury found him guilty of unlawfully wounding, without the felonious intent, which was a verdict that they could lawfully bring in upon such an indictment, under the provisions of 14 & 15 Vict. c. 19, s. 5. It was held that the prisoner was punishable under English law, and that he was properly charged with an offence under English law, and that upon such charge he could be convicted of any offence, of which he could under English law have been convicted on a charge so framed. But that the procedure was that of the place of trial, and therefore the prisoner could not object to the absence of a grand Jury, which was abolished by Act XIII of 1865. (Reg. *v.* Thompson, 1 B.O.C.R. 1.)

There seems, however, to be a distinction in cases of homicide, according as the death happened on land or by sea.

Where any person dies in India of a stroke, poisoning or hurt inflicted within the Admiralty jurisdiction, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, enquired, tried, determined and punished in India in the same manner in all respects as if such offence had been wholly committed in India. But where the death has occurred upon the sea, or within Admiralty jurisdiction then "such offence shall be held for the purpose of this Act to have been wholly committed upon the

sea" (12 & 13 Vict. c. 96, s. 3). In the former case, apparently, the criminality would be tested by the Penal Code, in the latter, by the Criminal law of England.

FOURTHLY.—It will be seen from the Statutes already quoted that there was a similar variance as to the punishment which was to follow upon conviction. In some cases it was allotted according to the local law, in other cases according to the law of England. The difficulties arising in consequence led to the passing of the Colonial Court's Act (37 & 38 Vict. c. 27) which provides by s. 3, that

"When by virtue of any Act of Parliament now or hereafter to be passed, a person is tried in a Court of any colony (which includes India, s. 2,) for any crime or offence committed upon the high seas or elsewhere out of the territorial limits of such colony and of the local jurisdiction of such Court, or if committed within such local jurisdiction made punishable by such Act, such person shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been inflicted within the limits of such colony; and of the local jurisdiction of the Court, and to no other, any thing in any Act to the contrary notwithstanding. Provided always, that if the crime or offence is a crime or offence not punishable by the law of the colony in which the trial takes place, the person shall, on conviction, be liable to such punishment, (other than capital punishment) as shall seem to the Court most nearly to correspond to the punishment to which such person would have been liable in case such crime or offence had been tried in England."

It will be seen that the Acts and Statutes just referred to govern two distinct cases; first, crimes committed on land, out of British territories; secondly, crimes committed on the seas all over the world. But there is a third case which may arise; viz., where a crime is committed inland within the British territories, but in a place where no Court has jurisdiction. In one case, some Burmese, Native subjects of the Crown, were indicted before the Supreme Court of Calcutta for a murder committed on some uninhabited islands in the Bay of Bengal. The Supreme Court had no jurisdiction over the prisoners as Burmese, nor over the place where the crime was committed, which was beyond the limits of the Charter. The indictment was framed under 9 Geo. IV, c. 74, s. 56, which provides that, where a person has been wounded within the limits of the Charter, and has died without those limits, *or vice versâ.*

"Every offence committed in respect of such case, may be dealt with by any of Her Majesty's Courts of justice within the British territories under the Government of the East India Company, in the same manner in all respects as if such offence had been wholly committed within the jurisdiction of the Court, within the jurisdiction of which such offender shall be apprehended or be in custody."

After conviction, it was held by the Privy Council that the prisoners must be released, since the Supreme Court had no jurisdiction either over the place where, or over the persons by whom the crime was perpetrated. The object of the Statute was held to be

"Only to apply the law which had been lately enacted in England, as to an offence partly committed in one part and partly completed in another, to the East Indies, and not to make a new enactment rendering persons liable for a complete offence, who would not have been liable before." (Nga Hoong *v.* The Queen, 7 M.I.A. 72, 103.)

A fortiori:—There is no jurisdiction, where the blow is inflicted

by one foreigner upon another foreigner on board a foreign vessel on the high seas, though the death occurs, and the prisoner is in custody within the jurisdiction. (Reg. *v.* Lewis, 26 L.J.M.C. 104; D. & B. 182.)

And I do not conceive that 12 & 13 Vict. c. 96 (*ante* p. 9) makes any difference. As I understand that Statute, it confers upon inland Courts in the Colonies and India, the jurisdiction possessed by the Admiralty Court. But it does not confer upon them a jurisdiction neither possessed by the Admiralty nor by any other Court in England. (See Reg. *v.* Bjornson, 34 L.J.M.C. 180.)

For an elaborate discussion as to the powers of the Indian Legislature to give jurisdiction to its Courts over offences committed out of India, see Reg. *v.* Elmstone, 7 Bomb. C.C. 100 & 110.

Certain laws not to be affected by this Act.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 William IV, Chapter 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said Territories, or the Inhabitants thereof, or any of the provisions of any Act for punishing mutiny and desertion of Officers and Soldiers in the service of Her Majesty or of the East India Company, or of any Act for the Government of the Indian Navy, or of any special or local law.

For list of Special and Local Laws, see Addenda.

The words "special" and "local law" are defined by ss. 41, 42 of Chap. II.

Although an offence is expressly made punishable by a special or local law, it will be also punishable under the Penal Code, if the facts come within the definitions of the Code. Accordingly the High Court of Madras held that a prisoner might be punished under s. 465, for making a false declaration under s. 5 of Act X of 1841, though a specified penalty is provided by s. 23 of that Act. (Rulings of 1865 on s. 5.) The Court of Session has jurisdiction to hear appeals on sentences passed by a Magistrate under such special and local laws. (Rulings of Mad. H.C. 1865 on s. 409 of Cr. P.C.); and conversely, it is no reason for quashing a conviction under a special law, for instance under s. 29 of Act V of 1861, that the facts would constitute an offence punishable under the Penal Code. (4 R.C.C.R. 17.) But of course a person cannot be punished under both the Penal Code and a special for the same offence. (5 N.W.P. 49.)

CHAPTER II.

GENERAL EXPLANATIONS.

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(*a*) The sections in this Code, which contain definitions of offence, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b*) A, a Police Officer without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Expression once explained is used in the same sense throughout the Code.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man." "Woman."

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

11. The word "person" includes any Company or Association or body of persons, whether incorporated or not.

"Person."

12. The word "public" includes any class of the public or any community.

"Public."

13. The word "Queen" denotes the sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Queen."

14. The words "servant of the Queen" denote all officers or servants continued, appointed or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," or by or under the authority of the Government of India or any Government.

"Servant of the Queen."

See as to "Government" post s. 17.

15. The words "British India" denote the Territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

"British India."

16. The words "Government of India" denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

"Government of India."

17. The word "Government" denotes the person or persons authorized by law to administer Executive Government in any part of British India.

"Government."

18. The word "Presidency" denotes the Territories subject to the Government of a Presidency.

"Presidency."

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

"Judge."

Illustrations.

(*a*) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.

(*b*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c*) A Member of a Punchayet which has power, under Regulation VII of 1816 of the Madras Code, to try and determine suits, is a Judge.

(*d*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

Judges and public Servants not removeable from office without the sanction of Government, can only be prosecuted for offences under the Penal Code, committed by them in their official capacity, by permission of the Government, or of some officer, or superior authority empowered to grant such permission. (Cr. P.C., s. 466.)

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

"Court of Justice."

Illustration.

A Punchayet acting under Regulation VII of 1816 of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :—

"Public servant."

First.—Every Covenanted Servant of the Queen ;

Second.—Every Commissioned Officer in the Military or Naval Forces of the Queen while serving under the Government of India, or any Government ;

Third.—Every Judge ;

Fourth.—Every Officer of a Court of Justice whose duty it is, as such Officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;

Fifth.—Every Juryman, Assessor, or member of a Punchayet assisting a Court of Justice or public servant ;

Sixth.—Every Arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth.—Every Officer of Government whose duty it is, as such Officer, to prevent offences, to give information of offences, to bring offenders to Justice, or to protect the public health, safety, or convenience ;

Ninth.—Every Officer whose duty it is, as such Officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or

to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every Officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty;

For instance, a supernumerary peon of the Collector's Court, who received no fixed pay, but was remunerated by fees when employed to serve any process. (7 B.L.R., 446.)

The word officer in this clause means a person who represents Government, either directly, or as an auxiliary to such direct representative. A person who receives property or revenue on his own account, as for instance, the lessee of a village, is not an officer of Government, although he is bound to keep accounts, and to give over a share to Government. (12 Bomb. 1.)

Tenth.—Every Officer whose duty it is, as such Officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

Illustration.

A Municipal Commissioner is a public servant.

Or an Engineer who receives and pays to others Municipal monies, although he has not the power of sanctioning such expenditure. (6 Bomb. C.C., 64.)

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

22. The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

"Moveable property."

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful gain."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

"Wrongful loss."

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

"Wrongful gain" includes wrongful retention of property.

"Wrongful loss" includes the being wrongfully kept out of property.

24. Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly."

"Dishonestly."

25. A person is said to do a thing fraudulently, if he does that thing with intent to defraud, but not otherwise.

"Fraudulently."

26. A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but not otherwise.

"Reason to believe."

27. When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Property in possession of wife, clerk, or servant.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk

or servant, is a clerk or servant within the meaning of this section.

28. A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

"Counterfeit."

Explanation.—It is not essential to counterfeiting that the imitation should be exact.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

"Document."

See note to s. 464.

Explanation 1.—It is immaterial by what means, or upon what substance the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A Check upon a Banker is a document.

A Power of Attorney is a document.

A Map or Plan which is intended to be used, or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures, or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a Bill of Exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the Bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the

words "pay to the holder," or words to that effect, had been written over the signature.

"Valuable security."

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a Bill of Exchange. As the effect of this endorsement is to transfer the right to the Bill to any person who may become the lawful holder of it, the endorsement is a "Valuable security."

A settlement of account in writing, though unsigned, and containing no promise to pay, has been held to be a "valuable security" as being evidence of an obligation. (2 Mad. H.C. 247.)

"A Will."

31. The words "a Will" denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act." "Omissions."

33. The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

Each of several persons liable for an act done by all in like manner as if done by him alone.

34. When a criminal act is done by several persons, in furtherance of the common intention of all, (Act XXVII of 1870, s. 1) each of such persons is liable for that act in the same manner as if the act were done by him alone.

But he is not liable for the act of each person, unless it was done in the furtherance of the common design of all. As Sir B. Peacock, C.J. said in a recent case. (1 R.C. & C. Cr. R. 43.)

"If the object and design of those who seized Amoordee was merely to take him to the Tannah on a charge of theft, and it was no part of the common design to beat him, they would not all be liable for the consequence of the beating, merely because they were present. It is laid down that when several per-

sons are in company together, engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits any offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention."

"It is also said that although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who committed it, he will not be a felon, merely because he did not attempt to prevent it, or to apprehend the felon."

"But if several persons go out together for the purpose of apprehending a man and taking him to the Tannah on a charge of theft, and some of the party in the presence of the others beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on, without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties, and acting in concert, and that the beating was in furtherance of a common design."

"I do not know what the evidence was. All I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals." (See also 3 B.L.R., P.C. 44; 11 B.L.R. 347.)

The law upon this subject is very neatly laid down by an American jurist (Bishop, § 439) who says:—

"The true view is doubtless as follows: Every man is responsible criminally for what of wrong flows directly from his corrupt intentions; but no man, intending wrong, is responsible for an independent act of wrong committed by another. If one person sets in motion the physical power of another person, the former is criminally guilty for its results. If he contemplated the result, he is answerable, though it is produced in a manner he did not contemplate. If he did not contemplate the result in kind, yet if it was the ordinary effect of the cause, he is responsible. If he awoke into action an indiscriminate power he is responsible. If he gave directions vaguely and incautiously, and the person receiving them acted according to what might be presumed to have been his understanding of them, he is responsible. But, if the wrong done was a fresh and independent wrong springing wholly from the mind of the doer, the other is not criminal therein, merely, because, when it was done, he was intending to be a partaker with the doer in a different wrong. These propositions may not always be applied readily to cases arising, yet they seem to furnish the true rules."

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention, is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Wherever the causing a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

Illustrations.

(*a*) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement, with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(*b*) A and B are joint Jailors, and as such have charge of Z, a prisoner, alternately for six hours at a time. A and B intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*) A, a Jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Several persons engaged in the commission of a criminal act may be guilty of different offences.

Illustration.

A attacks Z under such circumstances of grave provocation, that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

See note to s. 117. Post. *Abetment*.

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means, which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

"Voluntarily."

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet if he knew that he was likely to cause death, he has caused death voluntarily.

40. Except in the chapter and sections mentioned in clauses two and three of this section, the word 'offence' denotes a thing made punishable by this Code.

"Offence."

In Chapter IV and in the following sections, namely, Sections 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

And in Sections 141, 176, 177, 201, 202, 212, 216 and 441, the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine. (Act XXVII of 1870, s. 2.)

The word "offence" does not extend to acts punishable by English law. See *post*, note to s. 224; and as to abetment of such offences, see note to s. 109.

"Special Law."

41. A "special law" is a law applicable to a particular subject.

42. A "local law" is a law applicable only to a particular part of British India.

"Local Law."

43. The word "illegal" is applicable to every thing which is an offence, or which is prohibited by law, or which furnishes

"Illegal."
"Legally bound to do."

ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Injury." **44.** The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property.

"Life." **45.** The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death." **46.** The word "death" denotes the death of a human being, unless the contrary appear from the context.

"Animal." **47.** The word "animal" denotes any living creature, other than a human being.

"Vessel." **48.** The word "vessel" denotes any thing made for the conveyance by water of human beings, or of property.

"Year." "Month." **49.** Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.

"Section." **50.** The word "section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

"Oath." **51.** The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

See Indian Oaths Act X of 1873.

"Good faith." **52.** Nothing is said to be done or believed in good faith, which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

"Punishment."

53. The punishments to which offenders are liable under the provisions of this Code are—

First.—Death.

Secondly.—Transportation.

Thirdly.—Penal servitude.

Fourthly.—Imprisonment, which is of two descriptions, namely :—

(1) Rigorous, that is, with hard labour.

(2) Simple.

Fifthly.—Forfeiture of property.

Sixthly.—Fine.

Whipping is now added as a punishment in certain cases under Act VI of 1864.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of transportation for life.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India, or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

"When any person has been sentenced to punishment for an offence, the Governor-General of India in Council or the Local Government (ante, s. 17) may, at any time, without any conditions, or upon any conditions which such

person will accept, remit the whole or part of the punishment to which he shall have been sentenced, or grant a reprieve or respite in respect of such sentence." Or may "without the consent of the person sentenced, in substitution for the sentence passed according to law, commute any one of the following sentences for any other mentioned after it—death, transportation, penal servitude, imprisonment." (See too Act XVIII of 1855.)

"On breach of the prescribed conditions, the pardon may be withdrawn, and the person remanded to undergo the unexpired portion of his sentence." (Cr. P.C., s. 322; Act XI of 1874, s. 34.)

Europeans and Americans to be sentenced to penal servitude instead of transportation.

56. Whenever any person being an European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV of 1855.

Provided that where an European or American offender would, but for such act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life. (Act XXVII of 1870, s. 3.)

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

Offenders sentenced to transportation how to be dealt with until transportation.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

The place or places of transportation are to be appointed by the Governor-General, and directions for the removal of each convict are to be given by the Local Government, (Cr. P.C., s. 319) unless in the case of a person already undergoing a previous sentence of transportation. (Cr. P.C., s. 320.) The place of transportation is not to be specified by the Court passing the sentence. (Cr. P.C., s. 319.) See too Act XVIII of 1862, s. 48.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

In what cases transportation may be awarded instead of imprisonment.

This section can only be applied where the particular offence for which the prisoner is transported is punishable with imprisonment for seven years or upwards. It is not competent to a Judge, where a prisoner is convicted of several offences, each punishable with a shorter term of imprisonment, but conjointly exceeding seven years, to lump all the periods together, and then commute into transportation. (2 R.J. & P., 392; 5 R.J. & P., 34.) Nor can the transportation awarded under this section exceed the imprisonment for which the prisoner might have been sentenced, even though it would have been open to the Judge to award a longer period of transportation under the section appropriate to the crime. Therefore where the particular crime is punishable by transportation for life, or ten years' imprisonment, if the Judge does not wish to inflict the extreme penalty, he cannot give more than ten years' transportation. (3 R.J. & P., 54; 4 R.J. & P., 575.)

"The correct mode of proceeding is to sentence the offender to transportation, mentioning at the same time that under s. 59 of the Penal Code such transportation is awarded instead of imprisonment, simple or rigorous, as the case may be." (2 R.C.C. Circ., 19.)

The power given by s. 59 can be exercised by any officer who is authorised to inflict a punishment amounting to seven years' imprisonment. But a Magistrate, who can only imprison for two years, cannot transport although the offence which he is trying is punishable with imprisonment for a term of upwards of seven years' imprisonment. (5 R.C.C.C.R., 20; 1 B. App. Cr., 5.)

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender, to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

Offenders under the age of sixteen years, when sentenced to imprisonment for any offence, may by order of the Court be committed to a reformatory, instead of to the criminal gaol. (Act X of 1875, s. 112.)

The period of imprisonment under the sentence of a Criminal Court is to be calculated from the date on which such sentence was passed. The period during which a sentence may be suspended, pending appeal, is not to be reckoned in calculating the term of imprisonment, if the appeal be rejected. (Sudder Court Rules, 28th April, 1862.)

A sentence of imprisonment ought to commence from the time when sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by ss. 46, 47 & 48 (now ss. 314, 316 & 317) of the Criminal Procedure Code, a Magistrate cannot authorise a sentence passed by him to take place at some future date; nor, except as provided by s. 421 (now s. 281) of the Criminal Penal Code, can a sentence which is to take place immediately, be suspended. (3 B.L.R.A. Cr. 50.)

"When any person shall be sentenced to imprisonment, it shall be lawful for the Local Government to order the removal of such person during the period prescribed for his imprisonment, from the jail or place in which he is confined to any other jail or place of imprisonment within the jurisdiction of the same Local Government." (Cr. P.C., s. 49, now repealed. Act V of 1871.)

The power given by this section must be strictly observed, and therefore if the order of removal is made by any other authority than the Local Government, or if the prisoner is removed to any prison beyond the jurisdiction of the same Local Government, his detention will be illegal and he will be entitled to his release. The subject was a good deal discussed in a case under the Mutiny Act, 20 Vict. c. 13. Under s. 40, the keeper of any prison is authorised to keep any military offender, on the delivery of an order in writing to him from the Officer Commanding the Regiment to which the offender belongs. Under s. 41 the Officer who commands the District is authorised by an order in writing, to direct the removal of any prisoner under sentence of a Court Martial to be delivered over into military custody for the purpose of being removed to some other prison, or place, there to undergo the remainder of his sentence. Lieut. Allen was sentenced to four years' imprisonment, and consigned to custody in the Agra Fort. Afterwards the Officer Commanding the District directed that he should be removed to England to undergo the remainder of his sentence, but the order specified no place of custody. On his arrival in England he was placed in several prisons, and ultimately confined in the Queen's Prison, under an order from the Commander-in-Chief of the Forces. It was held that the keeper of the Queen's prison had no authority to detain him, since there was no order for his custody in that prison either under s. 40 or 41. (In re Allen, 30 L.J.Q.B. 38; Reg. *v.* Mount, 6 L.R.P.C. 305.)

The order made under Cr. P.C., s. 49 should, I conceive, specify the place to which the removal is to take place.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Sentence of forfeiture of property.

Illustration.

A being convicted of waging war against the Government of India is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

The effect of this section is to combine, for the benefit of the Crown, the English doctrines of forfeiture and escheat. Forfeiture only took place in reference to property vested in the criminal at the time.

"But the law of escheat pursued the matter still further. For the blood of the tenant being utterly corrupted and extinguished, it followed, not only that all that he then had should escheat from him, but also that he should be incapable of inheriting anything for the future. This may farther illustrate the distinction between forfeiture and escheat. If, therefore, a father were seized in fee, and the son committed treason and was attainted, and then the father died, here the land would escheat to the lord; because the son, by the corruption of his blood, was incapable to be heir, and there could be no other heir during his life; but nothing would be forfeited to the king, for the son never had any interest in the lands to forfeit." (1 Steph. Com. 418.)

Under the above section the son would have taken the lands, but only for a second of time, in order to pass them on to the Crown.

It may be necessary to observe that a party who labours under forfeiture, stands in the way of the descent of property to others just as if he were not subject to any such incapacity.

And, therefore, according to English law, the attainder of an elder son would intercept the rights of a younger son, and of all other collateral relations, who could only take after him. If therefore he could not take for himself, and they could not take in consequence of his blocking up the way, the estate necessarily escheated. (1 Steph. Com. 420.) But it may well be questioned whether this would be the case with Hindus in Madras, where the sons take, not after, but along with, the father, as his co-heirs. It is to be observed too, that forfeiture under the Code has not the effect of corrupting the blood and extinguishing its power of transmitting inheritable rights. The moment the sentence has expired, the stream of inheritance flows on unimpeded. It is only the personal rights of the convict which are transferred to Government, by a sort of statutory conveyance, but I conceive that Government takes nothing which he could not have assigned away. And so it was by English law, that

the attainder of the ancestor did not prevent the descent of an estate entailed upon his issue, because they claimed not from him, but by virtue of the previous gift to themselves as his children. (Williams, R.P. 49.)

This question as to the effect of a forfeiture for the crime of a father upon the rights of a son arose for decision lately in the Bengal High Court in the case of a Zemindary. The estate had been forfeited for rebellion under Act XXV of 1857, and was claimed for the son, on the death of the father, on the ground that the father's rights only could be confiscated, and that under the law of the Mitakshara, by which the case was admittedly governed, the son by birth became co-owner with his father, and his rights could not be affected by his father's acts. The Court, however, held that the father represented the whole estate, and that the Mitakshara law, by which each son has by birth a property in the paternal estate, is inconsistent with a custom according to which the estate was impartible and descended to the eldest son. Couch, C.J. said,

"The plaintiff's case in truth is that only the eldest son becomes a co-owner with his father, which is not the law of the Mitakshara. Either all the sons must become so, or none of them do, and the right of the eldest is only to inherit on his father's death." (13 B.L.R. 445, 460.)

It would be impossible within the limits of a note in a treatise on criminal law to discuss the soundness of a decision which opens up so large a question on one of the nicest questions of the law of inheritance. I may however call attention to the remarks of the Privy Council in the Shevagunga case, (9 M.I.A. 589, 610) to a Bengal case under Mitakshara law, (11 B.L.R. 397) and to the following Madras cases, all of which assume that notwithstanding the impartibility of a Zemindary it still retains the quality and incidents of joint family property. (1 Sel. Dec. 284; 3 Knapp; 27 Mad. Dec. 51 of 1849; 58 of 1869; 162 of 1861; 19 of 1862; 1 Mad. H.C. 141, 349; 2 Mad. H.C. 128; 4 Mad. H.C. 471.)

In cases where the crime does not specifically carry with it a forfeiture, there may be an express declaration of forfeiture by the Court under the succeeding section. This declaration must, I imagine, form part of the sentence, and be made at the time it is announced.

Forfeiture of property in respect of offenders punishable with death, transportation, or imprisonment.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable

estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Amount of fine.

By s. 308 of the Cr.P.C.

"Whenever a Criminal Court imposes a fine under any law in force for the time being, or confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms a part, the Court may order the whole or any part of the fine to be paid in compensation, (1) for expenses properly incurred in the prosecution, (2) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money. Such payment shall be made as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both."

"If the fine be awarded by a Court whose decision is subject to revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal. In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section." (See Act X of 1875, s. 136.)

Under Act XI of 1874, s. 34 the Governor-General in Council or the local Government has a similar power, whenever any fine or forfeiture is imposed on any person for any offence, of directing a share or proportion of *such fine* to be paid over to the prosecutor towards defraying his expenses. Nothing is said as to the power so to appropriate a part of the forfeiture, probably though a clerical error in drafting the Act.

When, upon the conviction of some prisoners for stealing bullocks, the Judge ordered the fine imposed upon them to be paid over to one of the witnesses as compensation for his having had to return to the prosecutor the bullocks which he had purchased, the order was held to be bad. The sale to the witness was not "the offence complained of" within the meaning of the section. (7 Mad. H.C. Rul. 13.)

Where two persons were jointly charged in respect of a theft of some bullocks, and it appeared that the first prisoner had stolen the bullocks and had sold them to the second prisoner, who had bought without a guilty knowledge, and was therefore acquitted, but was deprived of his purchase; it was held by the Madras High Court, that the loss so suffered by the second prisoner was not a loss resulting from the theft, which could be compensated under s. 44 of the Cr. P.C. as originally framed. (4 Mad. H.C. Appx. 28.) Nor it seems would such a case come within the meaning of the amended section. The injury suffered by the purchaser would arise, not

from the theft, but from his own act in buying from one who was not the owner of the property he sold.

Under this section it is competent to a Magistrate to award the whole or any part of a fine imposed upon a Police Officer as compensation to the prosecutor, notwithstanding the provision contained in s. 12, Act XXIV of 1859, that fines imposed upon Police Officers for misconduct shall be credited to the Police Superannuation Fund. (Rules of the Sudder Court, 28th April 1862.)

Where the Penal Code provides that an offender shall be punished with imprisonment, and *shall also* be liable to fine, it is necessary that the sentence should include some period of imprisonment, if only a moment. Where under such sections a fine only was imposed, the Court annulled the sentence as being illegal, directed the fine to be returned, and ordered the Lower Court to pass a new sentence, of which imprisonment should be either whole or a part. (1 Bomb. H.C. 4, 34, 39; 4 Mad. H.C. Appx. 18.)

Sentence of imprisonment in default of payment of fine.

64. In every case in which an offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

This section read with s. 309 of the Cr. P.C. does not render it imperative to record a sentence of imprisonment in default of payment of fine. (Mad. H.C. Rul., 7th Dec., 1866.)

This section only applies to convictions under the Penal Code, Therefore where a Magistrate inflicted a fine under s. 48 of Act XXIV of 1859, and then as an alternative imposed a term of imprisonment under this section, the Madras High Court quashed the convictions. They held that under Act XXIV of 1859, s. 48, he had to elect between fine and imprisonment, and if he preferred the former punishment he could only enforce it in the manner laid down by Act V of 1865. (Mad.) (3 Mad. H.C. Appx. 9; 7 Mad. H.C. Rul. 22. See also note to s. 70 post.) And so it was decided under a local Act (III of 1864, Mad.) which provided fines only for violation of its provisions, and gave a special procedure for levying them. (6 Mad. H.C. Rul. 40.)

Limit of term of imprisonment for default in payment of fine, when

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprison-

the offence is punishable with imprisonment as well as fine.

ment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

"Provided, that in no case decided by a Magistrate, where imprisonment shall have been awarded as part of the substantive sentence, shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence, otherwise than as imprisonment in default of payment of fine. Where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under this Act." (Cr. P.C., s. 309.)

Description of imprisonment for such default.

66. The imprisonment which the Court imposes in default of payment of a fine, may be of any description to which the offender might have been sentenced for the offence.

Term of imprisonment for default in payment of fine, when the offence is punishable with fine only.

67. If the offence be punishable with fine only, the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty Rupees, and for any term not exceeding four months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six months in any other cases.

In such case the imprisonment awarded in default of payment must be simple, not rigorous. (5 Bomb. C.C. 45.)

Such imprisonment to terminate upon payment of the fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate, whenever that fine is either paid or levied by process of law.

Termination of such imprisonment upon payment of proportional part of fine.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment, is not

less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred Rupees, and to four months' imprisonment in default of payment. Here, if seventy-five Rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five Rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty Rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty Rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

Fine may be levied within six years or at any time during the term of imprisonment.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Death of offender not to discharge his property from liability.

It has been ruled by the High Court of Bengal that s. 70 refers exclusively to cases which have been dealt with under the Code, and that fines inflicted for offences punishable under other special and local laws are not within the provisions of that section, unless its operation be specially extended thereto. (5 R.J. & P. 213.)

The imprisonment which the Court is authorised to impose in default of payment is intended as a punishment for non-payment, not as a satisfaction and discharge of the amount due. The object of ss. 64-70 is explained by the authors of the Code, as quoted in the Commissioners' Second Report, 1847, § 487.

"But we do not mean that this imprisonment shall be taken in full satisfaction of the fine. We cannot consent to permit the offender to choose whether he will suffer in person or in his property. To adopt such a course would be to grant exemption from the punishment of fine to those very persons on whom it is peculiarly desirable that the punishment of fine should be inflicted, to those very persons who dislike that punishment most, and whom the apprehension of that punishment would be most likely to restrain. We therefore propose, that the imprisonment which an offender has undergone

shall not release him from the pecuniary obligation under which he lies. His person will, indeed, cease to be answerable for the fine. But his property will for a time continue to be so. What we recommend is, that at any time during a certain limited period, the fine may be levied on his effects by distress. (s. 70.) If the fine is paid or levied while he is imprisoned for default of payment, his imprisonment will immediately terminate, (s. 68), and if a portion of the fine be paid during the imprisonment, a proportional abatement of the imprisonment will take place." (s. 69.)

Sections 64, 65, 68, 69 & 70 of the Indian Penal Code are to be applied by the High Court in all cases in which a fine is awarded. (Act X of 1875, s. 107.)

Fines are to be enforced by the issue of a warrant for the levy of the amount, by distress and sale of any moveable property belonging to the offender. Such warrant may be executed within the jurisdiction of the Court that issued it, and it shall authorise the distress and sale of any moveable property belonging to the offender, without the jurisdiction of said Court, when indorsed by the Magistrate of the District in which such property is situated. (Cr. P.C., s. 307; Act X of 1875, s. 105.) Immoveable property cannot be made liable for the payment of a fine. (5 Bomb. C.C. 63.)

This mode of levying the fine may be adopted, even though the offender has undergone the full term of imprisonment to which he has been sentenced in default of payment of the fine. (5 R.J. & P. 110.) But not in cases where any special procedure is laid down, by any special or local law, for the recovery of the fine. (Cr. P.C., s. 307; Act X of 1875, s. 105.)

Limit of punishment of offence which is made up of several offences.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences unless it be so expressly provided.

Illustrations.

(*a*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make the whole beating up. If A were liable to punishment for every blow he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

But were a person is convicted at the same time of two or more offences punishable under the same or different sections of the Penal Code, he may be sentenced to several penalties on each, "such penalties, when consisting of imprisonment or transportation, to commence

the one after the expiration of the other. And it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which such Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. Provided that in no case shall the person be sentenced to imprisonment for a longer period than 14 years; (Cr. P.C., s. 314; Act X of 1875, s. 109) provided also that if the case be tried by a Magistrate, (other than a Magistrate acting under s. 36) the punishment shall not in the aggregate exceed twice the extent of the punishment which such Magistrate is by his ordinary jurisdiction competent to inflict." (Cr. P.C., s. 314.) The limit of 14 years fixed by this section refers to sentences passed simultaneously, or upon charges which are tried simultaneously. It does not apply to cases of offences committed by persons who are already undergoing sentence of imprisonment. (3 R.C.C.C.R. 5.)

As to cases where whipping is permitted, see notes to Act VI of 1864, ss. 1, 2 & 8.

Where accumulated punishment is given under s. 314, separate sentences should always be given in the manner therein prescribed, otherwise in the event of an appeal, and a reversal of the conviction in one or more of the separate cases, it would be impossible to determine to what portion of the aggregate imprisonment the prisoners still remained liable. (4 Mad. H.C. Appx. 27.)

See also as to sentences on escaped convicts and prisoners already under sentence. (Cr. P.C., ss. 316-317, and Act X of 1875, ss. 110-111.)

I. If in one set of facts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time.

II. If a single act falls within two separate definitions of any law, in force for the time being, by which offences are defined or punished, the person who does it may be charged with each of the offences so committed, but he must not receive a more severe punishment than could be awarded by the Court which tries him for either.

III. If several facts, of which one or more than one would by itself constitute an offence, form, when combined, an offence under the provisions of any law in force for the time being, by which offences are defined or punished, a person who does them may be charged with every offence which he may have committed, but he must not receive for such offences, collectively, a punishment more severe than that which might have been awarded, by the Court trying him, for any one of such offences, or for the offence formed by their combination. (Cr. P.C., s. 454; Act X of 1875, s. 19. See also the illustrations appended to the section.)

The effect of this section was much considered in a Madras Case, (7 Mad. H.C. 375) where the Court laid down the law as follows:—

"The immediate question is whether a prisoner tried, convicted and punished under s. 369 for abducting a child with intent dishonestly to take moveable

property can be punished for the theft of part of the moveable property, which he intended dishonestly to take through means of the abduction."

"Save for the new Code, this course would be illegal under the repeated decisions of this Court."

"454, I, is the section by which this process is to be supported, if at all. If the words of this branch are taken in connection with those of s. 452, which precedes it, and of branches II and III they do not do so. 452 contains a rule of criminal pleading as to the necessity of a separate charge, and a separate trial for each distinct offence. Then 453 (similarly to the English rule as to several embezzlements) modifies this rule as to several offences committed within a year. The pre-requisites of joinder are similarity of the offences and their falling within the time. Then, strangely enough, s. 455 is quoted as the key to the similarity, and the result seems to be that they are similar when it is doubtful to which of them the proveable facts in each may amount. It can, we suppose, scarcely be meant that the element of doubt is to be the governing point. It perhaps means that where, as in the illustration—the criminative facts, which constitute the offence, are so nicely shaded that it is often doubtful *primâ facie* to which specific definition the facts are to be subsumed, there may be a joint trial."

"A further modification of the rule of severance is introduced in 454, I. Where facts "so united as to form the same transaction" fulfil the requisites of the definitions of several offences there may be one charge and one trial. Nothing here is said about the punishment, and we have still a mere rule of criminal pleading modifying the general rule."

"It is not until we come to the illustrations that we find punishment imported—and with the exception of (c) and (d) it may perhaps be said that the offences are all different in character. Those are mere transcripts of decided cases which seem inconsistent with the principles of others decided by the same Court; (e) is perhaps reconcileable if the kidnapping was for a different purpose, but if the kidnapping was for the purpose of subjecting to slavery, it will be impossible to reconcile it with other decisions and with the subsequent parts of this section."

"(b) embraces the case of three murders, and the legal principle is sound, though perhaps the application in practice will be found difficult."

"If we take the section there is, therefore, nothing to overrule the previous decisions, but undoubtedly the kidnapping illustration is opposed to previous decisions, and unless explained as above is a direct authority for the two sentences passed in the present case."

"If, however, we are to import the illustrations as a gloss upon I and as explanatory of its meaning, we must perform the like operation upon III, and must, if possible, reconcile all the three parts of the section."

"III says that where several facts aggregated form one offence, and if severed constitute several, the offender may be charged with every offence committed, but the utmost punishment awardable is the extreme punishment for the concrete or for one of the separate offences. We presume that the Court may elect whether it will punish for one or the other, but it may not punish for both."

"Now the words of the section do not meet the case. Kidnapping with intent to steal is not an offence formed by the union of kidnapping with stealing, but by the union of kidnapping with intent to do it, and the result on the mere words would be that the section contains no inhibition of two punishments."

"The illustrations, however show that the framers imagine that they had provided for the further case of the second offence being the substantive criminal act which was the evidence of intention in the former, and therefore evidentiary matter of that intent. Thus (n) house-breaking with intent to commit adultery and the commission of it may not be seperately punished. Still nearer to the present case is (p) the enticing away (it does not even say for the purpose of committing adultery) and adultery may not be separately punished. The measure of the punishment is here again the largest amount awardable for one of the offences."

"The section, therefore, with its illustrations forbids two punishments for an offence so compounded that one substantive offence is the aim of the other and evidentiary matter of the intent necessary to constitute that other. It is not narrowed to offences of a cognate character, for house-breaking and adultery have no more connection than kidnapping and theft. We come to the conclusion, therefore that, despite the inaptness of the words, there is nothing in these sections intended to alter, that, unless the illustrations are looked at, there is nothing to alter the principles upon which punishments were awarded before the Act passed, and that when they are all taken together those attached to a branch which does introduce a limitation upon the power of punishment must prevail over those attached to what is by itself a mere rule as to the joinder of charges."

"Read I and II together, they come to this—you may join them, but if when joined several make up one compound offence, you shall only punish for one. They shall be considered to make up such a compound, when one of them is the criminal result at which the other has arrived. You may then punish to the extent permissible for any one of them, but you shall not tack the punishments together."

"In our opinion this second punishment for the theft is by the present Code, as it was by a long course of previous decisions, which the Code is professing to follow, absolutly illegal."

So in Bombay it was held that a prisoner could not be at the same time punished for committing an offence by fire, with intent to destroy a warehouse, under s. 436, and of the offence of mischief by fire with the intent to cause damage to property above the value of Rupees 100 under s. 435. The Court said :—

"In some English cases one act or set of acts of the accused person has been held punishable under two different Statutes, and a double conviction and sentence have been sustained. In such cases the intention of the Legislature is to guard two interests of different species, and to prevent a person who has offended against both from escaping with a penalty provided for the defence of one only. The present is not such a case. The intention of the accused was solely to do one act, viz., to set fire to a warehouse; and the circumstance that the same act also answers to the definition of another and subordinate offence does not render him liable to an additional punishment for it. Such a case seems to be contemplated by s. 454 of the Criminal Procedure Code, paragraph II. It is a general rule that when, in the same Penal Statute, there are two clauses applicable to the same act of an accused, the punishments are not to be regarded as cumulative unless it be so expressly provided." (11 Bomb. H.C. 13.)

Under the old law the following decisions as to cumulative punishments were given :

Where the offences with which a prisoner is charged are parts of the same continuous transaction, as for instance, house-breaking and theft, it has been ruled by all the High Courts that the offender cannot be punished for both separately, but should be sentenced under s. 454 or 457 as the case might be. (Rulings of the Madras High Court, 1862 and 1863; 4 R.J. & P. 415; 1 Bomb. H.C. 87, but see contra 5 Bomb. C.C. 83 and 9 Bomb. 172.)

Similarly it has been decided that cumulative sentences cannot be given on charges of possessing stolen property under s. 411 and of voluntarily concealing the same property under s. 414; (4 R.J. & P. 122; 4 Mad. H.C. Appx. 14) of theft under s. 379 or criminal breach of trust under s. 409 and of receiving or retaining the same property under s. 411; (4 R.J. & P. 563; 1 R.C.C. Circ. 20; 2 N.W.P. 312) of making a false charge under s. 211 and of falsely swearing to the same matter under s. 193; (5 R.J. & P. 138) of culpable homicide, and of being a member of the unlawful assembly by whom the homi-

cide was committed; (3 R.C.C.C.R. 9) of using forged documents under s. 471, and of having them in his possession with intent to use them under s. 474, (6 N.W.P. 39); of kidnapping under s. 363, and of restraint in order to kidnap under s. 346, (6 N.W.P. 293); of criminal intimidation, with a threat of causing the death of a person under s. 506, and of criminal intimidation by posting up an anonymous communication against the same person under s. 507. (4 Bomb. H.C. Cr. 12.) So also where a particular section provides for the union of several criminal acts, e.g., grievous hurt committed in the act of house-breaking under s. 460, the prisoner ought to be indicted under it, and not for the separate offences of house-breaking and causing hurt under ss. 257 and 324. (4 R.J. & P. 360.)

On the same principle where a Joint Magistrate had passed a sentence against a prisoner on a charge of enticing away a married woman, and the Session Judge directed him to commit the prisoner for adultery, the Madras High Court ruled that the original sentence should have been at once annulled. There should not be two trials and two convictions before two separate tribunals on the same collection of facts, the requisite intention in the one case being the substantive delict in the other. (5 Mad. H.C. Rul. 17.)

Where however a prisoner was charged with cutting down, and carrying away a tree, the Bombay Court held that he might be punished on separate charges for mischief and theft, as the mischief was complete before the theft could have commenced. (2 Bomb. H.C. 416. *Sed quœre?*) And so it has been laid down, that the offence of rioting, armed with deadly weapons, under s. 148, is different from that of stabbing a person on whose premises the riot takes place, under s. 324; (3 R.C.C.C.R. 34; 3 N.WP. 174) that the offence of kidnapping under s. 463 is distinct from that of selling a minor for the purpose of prostitution under s. 372, (3 R.C.C.C.R. 37) and that the offence of concealing property in order to fabricate false evidence under s. 193 is different from that of concealing the same property, knowing it to be stolen under s. 414, (1 All. 379) and that separate sentences may be passed for each offence.

Where a prisoner is convicted of several offences, and receives upon each a sentence which, if standing alone, would not be open to appeal under ss. 273-274 of the Cr. P.C. it is held in Bengal that the sentences cannot be taken together, as if they formed one sentence, so as to give an appeal (1 B.A. Cr., 3; *contra* 12 Bomb. 147.) But an appeal may be brought against any sentence referred to in s. 273 or 274, by which any two or more of the punishments therein mentioned are combined, but not against a sentence in which imprisonment is awarded in default of payment of fine, and in addition thereto. Nor against any sentence which would not otherwise be liable to appeal, because the person convicted is ordered to find security to keep the peace. (Cr. P.C., s. 274; Act XI of 1874, s. 24.)

Punishment of a person found guilty of one of several

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these

offences, the judgment stating that it is doubtful of which.

offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

This section points to a difficulty which has hitherto been without remedy. An indictment may contain several counts, each charging a distinct offence; for instance, a simple assault, an assault with intent to wound, and an assault with intent to rape. In strict logic, no conviction ought to take place until the verdict can state which of the offences was perpetrated, and if it cannot be stated which of them, then it cannot be alleged with certainty that any one of them in particular was committed, and if so, there ought to be an acquittal. Juries always get out of the difficulty by returning a general verdict of guilty, which they are told they may do, if they are of opinion that any offence charged in the indictment has been accomplished, and they cannot be asked to state which was effected. Now, however, a Judge will be authorised to find that the prisoner is guilty upon some one, but he is doubtful upon which of the counts, and the sentence will then be given as if he had been convicted on the least aggravated charge.

It will be observed that to authorise a conviction under this section, the doubt must be as to which of the offences the accused has committed, not whether he has committed either. As the Commissioners observe (Second Report, 1847, § 527.)

"But it is to be remembered that, according to the supposition, the main facts which constitute the *corpus delicti* are proved, and that the doubt relates to some incidental point, which is of a quality important only as determining whether the offence falls technically under one designation or another; as for example, where a man is charged with theft, but a doubt is raised by the evidence whether the party had not the property in trust." (7 N.W.P. 137.)

In Bengal, and latterly in Madras, it has been held, that where a prisoner has made two contradictory statements, and there is no counter-balancing evidence to show which of them was false, he may be convicted upon an alternative finding that he gave false evidence in one or other of the two statements. (B.L.R. Sup. 521; 13 B.L.R. 324; 4 Mad. H.C. 51.)

But it must appear necessarily upon the face of the depositions or from other evidence, that one or other of the two statements was false, and was known to be false. (4 B.A. Cr. 4, 9.)

See Cr. P.C., s. 455 and Act X of 1875, s. 20 as to the indictment, where the nature of the crime is doubtful.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the

Solitary confinement.

imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

A time not exceeding one month, if the term of imprisonment shall not exceed six months.

A time not exceeding two months, if the term of imprisonment shall exceed six months and be less than a year.

A time not exceeding three months, if the term of imprisonment shall exceed one year.

No provision is made for a sentence of one year's imprisonment. But the Madras High Court has ruled that more than two months' solitary confinement cannot be awarded in a sentence of one year's imprisonment. (13th Feb. 1867; 17th Nov. 1870.)

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such period; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Limit of solitary confinement.

75. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, or to double the amount of punishment to which he

Punishment of persons convicted, after a previous conviction, of an offence punishable with three years' imprisonment.

would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years.

The Bengal High Court holds that the previous offence must have been committed since the Penal Code came into operation, so as to have been punishable under it. Therefore a previous conviction for theft committed in 1860 was held not to authorise increased punishment under s. 75. (5 R.J. & P. 152; 1 R.C.C. Cr. R. 60.) A contrary ruling has been given by the Madras High Court. (1 Aug. 1864.) But considering the definition of the word "offence" in s. 40 of the Penal Code, as interpreted subsequently by Acts IV of 1867 and XXI of 1870, the view taken by the Bengal High Court seems to me to be preferable. Nor can the enhanced punishment be awarded, where the offence subsequently committed is merely an attempt to commit an offence punishable under Chapter XII or XVII, or an abetment of such an offence. (Ruling of Mad. HC. 1864 on s. 75.) It has also been decided in Bengal that the subsequent offence must be one committed after release from prison upon the previous conviction; the liability to enhanced punishment for the second offence being "on the ground that the sentence already borne has had no effect in preventing a repetition of crime, and has been, therefore, insufficient as a warning." Therefore, where a prisoner committed several offences, which were made the subject of several trials, the last trial taking place a few weeks after those preceding it, while the prisoner was still undergoing his sentence, the Court held that such convictions could not be charged under s. 75. (1 R.C. & C. Cr. R. 60.)

See also note to form of indictment. Book II.

CHAPTER IV.

GENERAL EXCEPTIONS.

Act done by a person bound or by mistake of fact believing himself bound by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be, bound by law to do it.

Illustrations.

(*a*) A, a soldier, fires on a mob by order of his superior Officer, in conformity with the commands of the law. A has committed no offence.

(*b*) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due inquiry, believing Z to be Y, arrests Z. A has committed no offence.

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge, when acting judicially in the exercise of any power which is, or which in good faith he believes to be given to him by law.

The word "Judge" is defined by s. 19.

Accordingly this section does not protect a committing Magistrate.

Act done pursuant to the judgment or order of a Court of Justice.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

The phrase "Court of Justice" is defined by s. 20.

Act done by a person justified, or by mistake of fact believing himself justified by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be justified by law in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Chapter IV aims at embracing all those exceptional circumstances which may render lawful an act which upon its face appeared to be unlawful. This chapter must be read along with all the other chapters of the Code which treat of unlawful acts. For instance, s. 299 states that

"Whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death, commits the offence of culpable homicide."

This section taken by itself would impose the penalties of murder upon a surgeon, who properly performs a dangerous operation which results in death. Modified by the exceptions in this chapter, such consequences are, to a great extent (though not, in my opinion, entirely,) prevented.

Sections 76 to 79 relate to the cases of persons who are, or who justifiably believe themselves to be, acting under the authority of law.

Where a party actually is bound by law, or justified by law, in doing a particular act, of course there can be no more question upon the point. By the very force of the terms, he is doing, that which is lawful. Occasionally however a difficulty may arise, where the law under which he acts is of an exceptional character, and opposed to the ordinary law of the country. This may take place where the ordinary law is suspended, either by the interposition of a foreign or over-ruling power, or by some special act of the sovereign.

The effect of foreign conquest is to annul or suspend the ordinary sovereignty of the conquered country, and while the occupation lasts, the laws of the subject state can no longer be rightfully enforced, or be obligatory upon the inhabitants, who remain and submit to the conquerors. No other laws can, in the nature of things, be obligatory upon them, for where there is no protection or sovereignty there can be no claim to obedience. (Per Mr. Justice Story, cited 3 Phill. Int. Law, 737-39.) In cases of civil war there is greater difficulty, for the first stage of a civil war is always, and necessarily, termed rebellion, and those who take part in, or aid it, rebels and traitors. But it is quite clear that with respect to civil war also, obedience involves sovereignty, and sovereignty is tested by protection. Dr. Phillimore says :—

"The case supposed is always one of the greatest nicety and difficulty. It would rather seem as a matter of speculation, that when an old Government is so far overthrown that another Government entirely claims, and at least partially exercises, the jurisdiction which formerly belonged to it, that the individual is left to attach himself to, and to become, by adoption at least, the subject of either Governments. The analogy under which it is most just to range such cases has been thought to be that which has just been discussed, viz., the rule which applies to cases of foreign conquest, where those only are bound to obedience and allegiance who remain under the protection of the conqueror." (3 Phill. Int. L. 739.)

Upon this principle, during the recent mutiny the inhabitants of Delhi would have been perfectly justified in paying taxes to, and obeying the commands of, the King of Delhi, but it would have been otherwise at Agra where British rule was still maintained. So long ago as the year 1494, the same principle was asserted in the Statute 11, Hen. VII, c. 1, which pronounces all subjects excused from any penalty or forfeiture, which do assist or obey a king *de facto*.

A much more difficult question arises, when the defence is that the matter complained of was an Act of State, done under the immediate orders of the Sovereign. Here, the defence takes the shape not of a justification, but of a plea to the jurisdiction, for, if the defence is made out, no municipal tribunal can take cognizance of the matter.

It would probably be impossible to define the term "Act of State," as from its very nature such acts are of a very exceptional character. No act will bear this character unless it is done by the State, in its corporate and sovereign character, for some State purpose, and rests avowedly upon grounds higher than Municipal law. (See 6 B.L.R. 435.) Such acts generally take place in time of war, but not necessarily so, the existence of a war being merely the strongest possible evidence that the State is acting in its sovereign capacity. Upon this ground, no action will lie in any Municipal Court for false imprisonment, or any other act which takes place in consequence of the capture of a ship as prize, even though the ship be ultimately acquitted, and the seizure declared by the prize Court to be illegal. (Le Caux *v.* Eden, 2 Doug. 594; Lindo *v.* Rodney, 2 Doug. 613.) In a later case the facts were as follows :—After the overthrow of the Peishwa in 1818, the British Government seized his territory. The Governor of the Fort of Ryegur surrendered it, and was allowed to retire to Poonah, where he lived under military surveillance. During his residence a quantity of treasure found in his house was seized by the Bombay Government as being public property. The seizure was made in July. The Peishwa had surrendered in June, but the Mahratta forces were not finally subdued till December. It was admitted that Poonah had been for some months in the undisturbed possession of the provisional Government, and that Courts of Justice under the authority of that Government were sitting for the administration of law. An action brought by the executor of the Governor of Ryegur was declared untenable by the Privy Council. Lord Tenterden said :—

"We think the proper character of the transaction was that of hostile seizure made, if not *flagrante* yet *nondum cessante bello*, regard being had both to the time, the place, and the person, and consequently that the Municipal Court had no jurisdiction to adjudge upon the subject; but that, if anything was done amiss, recourse could only be had to the Government for redress." (Elphinstone *v.* Bedreechund, 1 Knapp. 316, 360.)

The same principle was maintained in two cases in which the Madras Government were defendants. The first was a case of Syed Ally *v.* E. I. Co. (7 M.I.A. 555.) There the bill alleged that the plaintiff's ancestor held an Altumgah Jaghire under grant from the Nabob of the Carnatic, that after the treaty of 1801, the E. I. Co. assumed the Government of the Carnatic, and thereupon ordered all sunnuds under which the Jaghires were held, to be sent to the Collector, for the purpose of examining into the titles under which they were claimed, but expressly promised to restore all such Jaghires to the persons found to be entitled. The plaintiff further alleged that Altumgah grants were perpetual, and not resumable by the Sovereign, and complained that the E. I. Co. had granted away the Jaghire to a person not lawfully entitled to it. The Supreme Court decided that the grant by the Nabob was perpetual and valid, and decreed for the plaintiff, but this decree was reversed on appeal by the Privy Council, who said in giving their judgment, (p. 577.)

"Their lordships are of opinion, that the treaty in question did vest the rights of sovereignty in the E. I. Co., and that the E. I. Co., in the exercise of what they considered their right of sovereignty, resumed the Jaghire in question, and granted it to Khutee Moolah Khan, not in the form of the original grant to his father, but in terms totally different, being for life only; and that

they reserved to themselves the sayer and other revenue duties. It is in effect the same thing, as an act of sovereignty, as if it had been granted to a mere stranger, and no further confirmation of the title of Assim Khan than if such a grant had been made. Their lordships therefore are of opinions that the Supreme Court of Madras had no authority to question an act of sovereignty exercised on the part of the E. I. Co."

The next case was that of Kamachee Boye *v.* E. I. Co., (7 M.I.A. 476) which arose out of the annexation of the Raj of Tanjore. The Rajah died in 1855 leaving no male descendants, and in 1856 the Court of Directors declared the dignity of the Rajah of Tanjore to be extinct. A Commissioner was sent down to Tanjore for the purpose of making the necessary arrangements. He informed the family that he intended to take possession of all the public property of the State, and availing himself of the presence of some British troops he entered the Fort, and put his seal upon all property, public and private. A bill was filed by the personal representatives of the late Rajah, in which they acquiesced in the seizure of the public property, but claimed to be entitled to an account of the personal property. As in Syed Ally's case, the Supreme Court decreed for the plaintiff, but this decree was reversed on appeal by the Privy Council. Their judgment is important as showing, that not only the Act of State itself, but every act which is incidental and accessory to its completion is protected from Municipal jurisdiction. Their lordships said :—(p. 531.)

"The next question is, what is the real character of the act done in this case? Was it a seizure by arbitrary power, on behalf of the Crown of Great Britain, of the dominions and property of a neighbouring State, an act not affecting to justify itself on grounds of Municipal law; or was it, in whole, or in part, a possession taken by the Crown under colour of legal title of the property of the late Rajah of Tanjore, in trust for those who by law might be entitled to it on the death of the last possessor? If it were the latter the defence set up, of course, has no foundation."

Their lordships answered part of this question by showing that the seizure could not be justified on any ground of legal title, and then proceed to say—(p. 536.)

"It is clear from Mr. Forbes' Report to the Madras Government of what took place on the occasion, that though no resistance was offered by the family of the Rajah, or the inhabitants of the Fort, to the seizure of the Raj and of the place and property of the Rajah, it was regarded on both sides as a mere act of power, not resisted, because resistance would have been in vain. 'Much sorrow,' he says, 'was expressed, and much grief was shown; but all submitted at once to the authority of the Government, and placed themselves in its hands.'"

"It is by these acts of Mr. Forbes that the E. I. Co. is in possession of whatever it holds now claimed by the respondent. The acts of Mr. Forbes were approved by the Governor of Madras by a Minute dated the 21st of October, 1856, and they are adopted and ratified by the appellants in their answer in this suit."

"What property of the Rajah was within the authority given to Mr. Forbes, and what may be the consequence of any seizure in excess of that authority, we will consider under the next head; but that the seizure was an exercise of Sovereign power effected at the arbitrary discretion of the Company, by the aid of military force, can hardly admit of doubt."

"But then it is contended, that there is a distinction between the public and private property of a Hindu Sovereign, and that although, during his life, if he be an absolute monarch, he may dispose of all alike, yet on his death some

portions of his property, termed his private property, will go to one set of heirs, and the Raj with that portion of his property, which is called public, will go to the succeeding Rajah."

"It is very probable that this may be so; the general rule of Hindu inheritance is partibility; the succession of one heir, as in the case of a Raj, is the exception. But assuming this, if the company, in the exercise of their Sovereign power, have thought fit to seize the whole property of the late Rajah, private as well as public, does that circumstance give any jurisdiction over their acts to the Court at Madras? If the Court cannot enquire into the act at all, because it is an Act of State, how can it enquire into any part of it, or afford relief on the ground that the Sovereign power has been exercised to an extent which Municipal law will not sanction."

"The result, in their Lordships' opinion, is that the property now claimed by the respondent has been seized by the British Government, acting as a Sovereign power, through its delegate the E. I. Co., and that the act so done, with its consequences, is an Act of State over which the Supreme Court of Madras has no jurisdiction." (See another case arising out of a later stage of the same transaction. 3 Mad. H.C. 424.)

A later case on the subject was that of the Rajah of Coorg *v.* E. I. Co. (30 L.J. Ch. 226; 29 Beav. 300.) There, the Rajah sued the E. I. Co. for the recovery of two promissory notes, which had been taken from him in war, and which he alleged that the Company still held in trust for him. The Master of the Rolls said:—

"If this can be fairly represented to be an instance of a foreign power taking prisoner an enemy, by means whereof, and while so holding him, obtaining possession of documents which established his right to recover his debt due to him in his private capacity, then it is clear that the plaintiff is entitled to relief, and the circumstances that the defendants constitute both the conquering power and the debtor does not in any manner vary the question. But if the notes were the property of the plaintiff in his character of Rajah, and if they were taken possession of by the defendants in the exercise of their Sovereign and political power, then this Court cannot interfere."

The distinction between Acts of State and acts done by the State, as affecting the question of municipal jurisdiction, was very clearly shown in two cases lately decided by the Privy Council, in one of which the jurisdiction was maintained, while in the other it was denied.

In the former case the E. I. Co., on the death of the Begum Sumroo in 1836, had resumed her lands and seized certain arms and stores which were said to appertain to the tenure. It appeared that previous to 1803 the Begum held her possessions in the Dooab under Scindia, who was the *de facto* sovereign. Her status was that of a *jaghirdar*, holding upon a *jaidad* tenure, *i.e.*, exercising by a sort of delegated sovereignty, the whole administration, civil and criminal, within her territory, and drawing all its public revenues, on condition of keeping up a body of troops to be employed, when called upon, in the service of the sovereign under whom she held. After 1803 the sovereignty formerly possessed by Scindia passed to the E. I. Co., and the status of the Begum remained as before, her sovereign only being changed. The lower Courts dismissed the suit on the ground that the resumption was an Act of State. This defence was over-ruled by the Judicial Committee. They said,

"The Act of Government in this case was not the seizure by arbitrary power of territories which up to that time had belonged to another Sovereign State; it was the resumption of lands previously held from the Government under a particular tenure, upon the alleged determination of that tenure. The possession

was taken under colour of a legal title; that title being the undoubted right of the sovereign power to resume and retain, or assess to the public revenue, all lands within its territories upon the determination of the tenure under which they may have been exceptionally held rent-free. If by means of the continuance of the tenure, or for other cause, a right be claimed in derogation of this title of the Government, that claim, like any other arising between the Government and its subjects, would, *primâ facie*, be cognizable by the Municipal Courts of India." (Forester *v.* Secretary of State, 12 B.L.R. (P.C.) 120, 150.)

In the latter case, the plaintiff sued to establish their rights as mortgagees under the King of Delhi of land which had been assigned in 1803 for the support of the Mogul Sovereignty, and which had been seized and confiscated after the mutiny in 1857. There, also, the suit had been dismissed for want of jurisdiction, and this dismissal was affirmed. The Judicial Committee distinguished this from the case last cited on the ground of the difference between the status of the King of Delhi and the Begum Sumroo. The status of Shah Alum was that of a king. The Begum was held not to be a sovereign princess, but a mere *jaidadar* under Scindia. The lands had been assigned to the Delhi kings by an arrangement which "was as much an Act of State as if is had been carried into effect by formal treaty signed by the British Government."

"Municipal Courts have no jurisdiction to enforce engagements between sovereigns founded on treaties. The Government when they deposed and confiscated the property of the late king, as between them and the king, did not affect to do so under any legal right. Their acts can be judged of only by the law of nations; nor is it open to any other person to question the rightfulness of the deposition, or of the consequent confiscation of the king's property."

"The revenues and territories which in 1804 were, by an Act of State, assigned for the maintenance of Shah Alum and his household, were in 1857, also by an Act of State, resumed and confiscated. The seizure and confiscation were acts of absolute power, and were not acts done under colour of any legal right, of which a Municipal Court could take cognizance." (Raja Saligram *v.* The Secretary of State, 12 B.L.R. (P.C.) 167, 184. See to Doss *v.* Secretary of State, 19 L.R.Eq. 509; Sirdar Bhagwan Singh *v.* Secretary of State, 2 L.R.I.A. 38.)

By 21 Geo. III, c. 70, ss. 1 to 3, it was provided "that the Governor-General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort William in Bengal, for or by reason of any act or order, or any other matter or thing whatsoever, counselled, ordered or done by them in their public capacity only, and acting as Governor-General in Council." And "that if any person or persons shall be impleaded in any action or process, civil or criminal, in the said Supreme Court, for any act or acts done by the order of the said Governor-General in Council in writing, he or they may plead the general issue, and give the said order in evidence; which said order, with proof that the act or acts done has or have been done according to the purport of the same, shall amount to a sufficient justification of the said acts, and the defendant shall be fully justified, acquitted, and discharged from all and every suit, action, and process whatsoever, civil and criminal, in the said Court. Provided always, that with respect to such order or orders of the said Governor-General and Council as do or shall extend to any British subject or subjects, the said Court shall have and retain as full and competent jurisdiction as if this act had never been passed."

The parties were still, however, liable to the jurisdiction of the English Courts. (Ibid. ss. 4-6. See Reg. *v.* Eyre, 3 L.R.Q.B. 487.)

Similar exceptions are created as to the Governor-General and the Governors and Councils of Madras and Bombay by Statutes 39 & 40, Geo. III, c. 79, s. 3, and 4 Geo. IV, c. 71, s. 7, and their charters provide, (Madras Charter, ss. 23 & 35; 2 M. Dig. 604, 617; Bombay Charter, ss. 30 & 45; 2 M. Dig. 654, 566) that it shall not "be competent for the said Court to hear or determine, or to entertain or exercise jurisdiction in any suit against the Governor-General of Fort William, or the Governor or any of the Council of the said Settlement, for or on account of any act or order, or any other act, matter, or thing whatsoever, committed, ordered or done by them in their public capacity, or acting as Governor-General, or Governor in Council;" also that neither of such Courts shall be competent to hear, try, and determine any indictment or information against the Governor-General, or the Governor or any of the Council of the respective Settlements, not being for treason or felony.

Before leaving the subject of Acts of State, it is necessary to observe that an act which would possess this character, if expressly ordered by the Crown, will become such by a subsequent ratification. This was so laid down in the case of Buron *v.* Denman, 2 Exch. 167, and was approved in the case of Kamachee Boye *v.* E. I. Co. above referred to. There the defendant, who was in command of a cruiser off the coast of Africa, seized and burnt a barracoon belonging to the plaintiff, who was a Spaniard carrying on a trade in slaves, and carried away his slaves. This procedure was not warranted by his instructions, but was approved of by the British Government when reported. It was held that this approval converted the act into an Act of State, for which the Crown alone was responsible, and was beyond the reach of any Municipal tribunal. It was also held that such ratification might be communicated by either a written or parol direction from the proper department, just as an original order might have been. (See too 9 Bomb. H.C. 314.)

All the cases cited upon this head have been instances of civil actions, but the rule would be exactly the same if the proceeding were of a criminal character. For instance, if the Spanish slave-dealer had resisted, and been fired on, and killed, the same reasons which made a civil action inadmissible would have served as a defence for Captain Denman on an indictment for murder.

The first illustration appended to s. 76 gives rise to what is occasionally a difficult question, viz., how far a soldier is justified by pleading the commands of his superior officer. Those commands may be legal or illegal, and if the latter, they may be believed to be legal, or known to be illegal. The first and last of these cases can create no doubt. If the command is legal the act is legal, and would have been so even without the command. The illustration in question states that the soldier fired upon the mob, not only by the order of his superior officer, but in conformity with the commands of law. If a soldier is put to guard a treasury, and it is attacked by a mob who cannot be kept off in any other way, he is authorised to fire on them under s. 103, even without orders. On the other hand if the order is

illegal, and is known to be such, the command will be of no avail. For instance, if a police peon were to plead the order of his Jemadar, as an excuse for torturing a prisoner to make him confess, such an excuse would be clearly untenable, and the rank of the officer who gave the order would make no difference. The intermediate case is the only one of any real difficulty; what is the position of a policeman or soldier who obeys orders of his officer, which he in good faith believes to be legal, and therefore binding upon him, but which turn out to be illegal? For instance, suppose a Magistrate forbids a caste procession, and the caste persist in carrying it out, and the Magistrate finding his police peons insufficient to check the progress of the procession calls out the military and directs them to fire, and lives are lost. What is the position of the soldier? Here it is plain that the Magistrate has taken upon himself to direct the infliction of capital punishment upon persons, who could legally only be punished with six months' imprisonment under s. 188. His act then would, according to English law, be murder, and that of the soldiers who obey him, however innocently, would be no less. And so it was laid down in the case of R. *v.* Thomas, 1 Russ. 823, that if a ship's sentinel shoot a man, because he persists in approaching the ship when he has been ordered not to do so, it will be murder unless such an act was necessary for the ship's safety. And it will be murder though the sentinel had orders to prevent the approach of any boats,—had ammunition given to him when he was put on guard, —and acted under the mistaken impression that it was his duty. The prisoner was sentinel on board of the *Achille*, when she was paying off. The orders to him from the preceding sentinel were to keep off all boats, unless they had officers with uniforms in them, or unless the *officers on deck* allow them to approach: and he received a *musket, three blank cartridges, and three balls*. The boats pressed, upon which he called repeatedly to them to keep off: but one of them persisted and came close under the ship; and he then fired at a man who was in the boat, and killed him. It was put to the jury to find, whether the sentinel did not fire under the mistaken impression that it was his duty: and *they found that he did*. But, a case being reserved, the Judges were unanimous that it was nevertheless murder. They thought it however a proper case for a pardon; and further they were of opinion, that if the act had been necessary for the preservation of the ship, as if the deceased had been stirring up a mutiny, the sentinel would have been justified. A similar question arose in Ireland in 1852. A party of soldiers were escorting a body of voters into an election at Six Mile Bridge in the County Clare. The mob tried to carry away the voters, and the officer in command ordered the soldiers to fire, and several of the rioters were killed. Several of the soldiers were tried for murder, and Mr. Justice Perrin directed the jury, that soldiers were merely armed citizens, and that the orders of their officers did not justify any acts of violence, unless the orders themselves were legal. In that case however great violence had been used by the mob, and the jury found the prisoner not guilty, probably being of opinion that the lives of the parties whom they were escorting were in danger.

The Scotch law takes a more lenient view of the position of soldiers. Mr. Alison says—(Crim. Law, p. 673.)

"The express command of a Magistrate or Officer will exonerate an inferior officer or soldier, unless the command be to do something plainly illegal, or beyond his known duty."

Then, after pointing out the peculiar position of a soldier, who is "subjected to a peculiar and peremptory code of laws, armed with powers of extraordinary severity, for the purpose of enforcing on his part the most implicit obedience to command," he proceeds—

"It will require, therefore, the very strongest case to subject a soldier to punishment for what he does in obedience to the distinct commands of his commanding officer. But still this privilege must have its limits; it is confined to what is commanded in the course of official duty, and which does not plainly and evidently transgress its limits. For, what if an officer command a private soldier to commit murder, or to steal, or to aid him in a rape, or if he order a file of soldiers to fire on an inoffensive multitude; certainly in none of these cases will the privates be exempted if they yield obedience to such criminal mandates." (See also Alison Crim. L. 39, 461.)

According to this view the soldier's exemption depends upon his opinion of the legality of the act, and if the order is given "in the course of official duty, and does not plainly and evidently transgress its limits," that is, if he honestly falls into an excusable mistake of law, he will be protected. But this is evidently not the view taken by the framers of the Code. His mistake, if he labours under one, must be a mistake of fact, and not a mistake of law. If he erroneously supposes his superior officer to be authorised to issue orders which are illegal he will be guilty, and his mistake can only go in mitigation of punishment, or as a ground for an absolute pardon.

Even the orders of the Supreme Government of India would be no justification of an unlawful act, unless under circumstances which constituted the entire transaction an Act of State. (Rogers *v.* Ragendro Dutt, 8 M.I.A. 130, *but see* 21 Geo. III, c. 70, ante p. 52.)

In no case, however, would such acts as the above be murder, if done *bonâ fide* by a public servant in the discharge of his public duty, though in excess of his legal powers; they would be culpable homicide. (s. 300. Exception 3.)

On the other hand, it is easy to conceive a case where a party might under a mistake of facts conceive himself justified in firing into a crowd, and would be excusable if he did so. Where the military are called out to check a riot, if it is proceeding to such a height as endangers life or property and cannot be checked by milder means, or if an attempt to arrest the ringleaders is resisted by force and their capture can in no other way be effected, it would be lawful to use fire-arms. A vigorous use of powder and ball might have stopped the French Revolutions of 1789, 1830, and 1848, and certainly would have stopped the Gordon and Bristol riots. If, then, the officer in command, erroneously conceiving such a state of things to exist, orders his men to fire, and if a soldier, honestly and with good reason believing his life or those of others to be in danger, kills a man, that act will be justified under s. 76.

No doubt, as Mr. Allison says, the position of a soldier is a very hard one. He is placed between the penalties of two laws—the Civil and Military. But there is no help for it. This is one of the drawbacks of his position, and the safety of the community demands that

the Civil law should retain him in its grasp, enforcing its principles with rigour, but inflicting its penalties with discretion.

Some of these difficulties are now provided for by the Cr. P.C. Chap. XXXVI lays down rules for the dispersion of unlawful assemblies, and gives Magistrates and other officers power to compel their dispersion if necessary by military force. Section 483 provides that, "No Magistrate shall be held to commit any offence by ordering the dispersion by military force of any assembly, the dispersion of which he regards, on reasonable grounds and in good faith, as necessary to the public security."

Under s. 485, and s. 486, "no officer obeying any such requisition shall be held to have committed any offence by any act done by him in good faith in order to comply with it."

"No inferior officer or private soldier shall be held to have committed any offence by any act done for the dispersion of any such assembly in obedience to any order, which he was bound by the Military Act or by the Indian Articles of War to obey."

Further, prosecutions against Magistrates, officers, and soldiers for acts done under Chap. XXXVI, can only be instituted with the sanction of the Government of India, Madras, or Bombay. (Cr. P.C. s. 488.)

This chapter shall be deemed to apply to the towns of Calcutta, Madras, and Bombay, and the word Magistrate in the same chapter shall include a Magistrate of Police. (Act XI of 1874, s. 43.)

Neither the orders of a parent or a master will furnish any defence for an illegal act. (Alison Crim. L. 671, 672.)

The orders of a foreign Government will only justify its own subjects, or British subjects while within its own jurisdiction. In a recent case, the master of an English ship contracted with the Chilian Government to carry to England some prisoners who were sentenced to banishment. On reaching England they indicted him for assault and false imprisonment, and on appeal the conviction was affirmed. The Court held that there could be no conviction for what was done within the Chilian territory, for that in Chili the acts of the Government towards its subjects must be assumed to be lawful, and that an English ship, while within the territorial waters of a foreign State, was subject to the laws of that State as to acts done to the subjects thereof. But an English ship on the high seas, out of any foreign territory, was subject to the laws of England, and therefore any jurisdiction under the orders of the Chilian Government ceased when the ship passed the line of Chilian jurisdiction. It might be that transportation to England was lawful by the law of Chili, and that a Chilian ship might so lawfully transport Chilian subjects. But for an English ship the laws of Chili out of the State were powerless, and the lawfulness of the acts must be tried by English law. (Per Erle, C.J. Reg. *v.* Lesley, 29 L.J.M.C. 97; Bell 220. See too Phillips *v.* Eyre, 4 L.R.Q.B. 225, 240.)

Under English law criminal acts, not being heinous felonies, if committed by the wife in the presence of her husband, were presumed to be committed under his coercion, and he only was punishable. (Arch.

18; Reg. *v.* Wardroper, 29 L.J.M.C. 116; Bell 249.) But under Scotch law these facts furnished no defence, and only went in mitigation of punishment. (Alison Crim. L. 66.) The present Code follows the Scotch law in this respect, with the single exception of "harbouring," which is no offence when a wife harbours her husband. (Mad. H.C. Rul., 12th April 1870.)

Mistake will be no justification, unless it is a mistake of fact, and not invariably then. It will never be any defence unless, assuming the fact to be, as it was erroneously supposed to be, the act done in consequence would have been lawful. A man who shoots an inmate of the house who comes into his room at night, supposing him to be a burglar, would be justified; because, if his supposition were correct, he would have authority under s. 103 to kill the offender. But if he fired out of his window by day at the same person, supposing that he was trespassing upon his paddy field, this would not be justifiable, for an actual trespasser could not lawfully be so assailed.

The extent to which ignorance of an essential fact may be pleaded as a defence to a criminal charge, was much discussed in a recent case. (Reg. *v.* Prince, 2 L.R.C.C. 154.) The prisoner was indicted under an English Statute, which is in substance identical with s. 361 of the I.P.C., for unlawfully taking an unmarried girl under the age of sixteen out of the possession and against the will of her father. All the facts were proved, but it was found by the jury that before the prisoner took the girl away she had told him that she was eighteen, and that the defendant *bonâ fide* believed that statement, and that the belief was reasonable. Upon a case reserved it was held by fifteen Judges (Brett, J. alone dissenting) that the conviction was right. The judgments establish the following rules:—

I.—That when an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence. For instance, on a charge of assaulting a Policeman in the execution of his duty, under s. 353, or of abducting a child under ten in order to steal from its person, under s. 369, or of lurking house-trespass by night, under s. 444, it would be no defence to establish ignorance that the person assaulted was a Policeman, that the child abducted was under ten, or that the hour at which the house was broken into was after sunset. (See p. 176.)

II.—That where an act is *primâ facie* innocent and proper, unless certain circumstances co-exist, then ignorance of such circumstances is an answer to the charge. For instance on a charge against a carrier of carrying game sent by an unqualified person, or against a person for sending vitriol not properly marked as such, or against a dealer of being in possession of stores marked with the admiralty broad arrow, it was in each case a sufficient answer to show that the defendant was ignorant that he was in fact carrying game, or sending vitriol, or that the goods in his possession bore the Government mark. (See pp. 162, 165, 168, 176.)

III.—That even in the last named cases, the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstance which alters the character of the act, or to a belief in

its non-existence. Where the defendant does the prohibited acts without caring to consider what is the truth as to the facts, or with notice of circumstances which ought to put him on enquiry, which he avoids, the absence of positive knowledge will be no defence. (See pp. 169, 177.)

The difficulty in Prince's case was that it came under none of the above three heads. To constitute the offence charged it was necessary to make out four things. First, that the person taken away was a girl, that is a female whose years rendered it probable that she was still under guardianship; secondly, that she was in fact in the lawful possession of some one; thirdly, that she was taken out of that person's possession without his consent; and, fourthly, that she was under sixteen. Unless all four circumstances were combined, the act was not unlawful in the sense of being criminally indictable. On the other hand the absence of the circumstance of age did not make the act innocent and proper, except so far as it exempted it from punishment. It was admitted that if the taker had wrongly believed that he had the guardian's consent to the taking, he would have been excused; so also if he had, though erroneously, believed that the girl was not in the possession or under the guardianship of any one. (See pp. 167, 175.)

It was asked on what ground an erroneous belief as to the existence of two ingredients in the definition of the offence should be a justification, while an equally erroneous belief as to another should be none? This was the ground of Mr. Justice Brett's opinion in favour of an acquittal.

Different answers were given by the other Judges. The judgment delivered by Blackburn, J. (p. 170) rests simply on a consideration of the language and object of the Statute, as rendering it unlikely that the prisoner's knowledge of the age of the girl could be an essential element in the offence. Mr. Justice Denman (p. 178) considered that the word "unlawfully" which occurs in the English Statute must be taken as "equivalent to the words 'without lawful excuse,' using those words as equivalent to 'without such an excuse as being proved would be a complete legal justification for the act, even where all the facts constituting the offence exist.'" He further held that as the father had the rights of a natural guardian until the daughter was twenty-one, the act of the defendant in taking her out of his custody, even on the supposition that she was actually eighteen, was an unlawful though not a criminal act, and therefore could not be said to be done 'lawfully.' This view clearly could not apply in India in the case of Hindu or Mahometan females, with whom, except for the purposes of certain Statutes affecting property, minority ceases at sixteen. Probably the most satisfactory, and for Indian purposes the most instructive view, was that taken by Bramwell, B. He said, (p. 175.)

"What the Statute contemplates, and what I say is wrong, is the taking of a female of such tender years that she is properly called a *girl*, can be said to be in another's *possession*, and in that other's *care or charge*. No argument is necessary to prove this; it is enough to state the case. The Legislature has enacted that if any one

does this wrong act, he does it at the risk of her turning out to be under sixteen. This opinion gives full scope to the doctrine of the *mens rea*. If the taker believed he had the father's consent, though wrongly, he would have no *mens rea;* so if he did not know that she was in any one's possession, nor in the care or charge of any one, in those cases he would not know he was doing the act forbidden by the Statute—an act which, if he knew she was in possession or care of any one, he would know was a crime or not, according as she was under sixteen or not. He would not know he was doing an act wrong in itself, whatever was his intention, if done without lawful causes." In other words, he who does that which is wrong must take the risk of its turning out to be criminal. This would supply us with a further rule; viz.

IV.—Where an act which is in itself wrong is, under certain circumstances, criminal, a person who does the wrong act, cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime.

It may be observed that the wording of s. 79 is strongly in favour of this construction. The mistake of fact must lead the person to believe in good faith that he is "justified by law in doing it." Not merely that his act is negatively not punishable, but that it is innocent and legal, neither in excess of his own rights, nor in violation of the rights of others.

Under s. 52, the mistake must be one in consequence of which the party "in good faith believes himself to be justified by law in doing the act." Good faith is defined by s. 52, as involving due care and attention. "It cannot be supposed that if a man merely dreamt of a certain state of facts, without any ground for his impression, and acted upon it, it would be sufficient. Some facts must exist which might give rise to an honest belief on his part that such state of facts existed as would have justified his actions." (Per Keating, J. Leete *v.* Hart, 3 L.R.C.P. 325.)

Mistake or ignorance of law, is no ground of defence, the general rule being, that every person who has capacity to understand the law is presumed to have a knowledge of it. And so far is this principle carried, that it has been held that a foreigner could not be allowed to show as a justification of his act, (though he might in mitigation of punishment,) that it was no offence in his own country, and that he was not aware it was considered wrong where he was tried. And, however hardly it may bear in some few cases, it is evident that the rule is a necessary one. If a criminal could get off by pleading ignorance of law, convictions would probably be rare, nor could society exist for a year, if even a sincere belief in the propriety of his conduct could justify any one who chose to murder or steal. (Arch. 19.)

Where however an act was innocent before, and was for the first time made an offence by Statute, a physical impossibility that the prisoner should have known of the Statute was held to be a bar to a conviction. Accordingly, in such a case, the parties were allowed to show that they were at sea when the Statute was passed, and that they could not possibly have been aware of it. (Arch. 20.)

Mr. Bishop remarks upon this point. (Bishop § 378.)

"In civil causes it would seem that if law and fact are blended as a mixed question, or if one's ignorance of fact is produced by ignorance of law, the whole may be regarded as ignorance of fact, of which the party is at liberty to take advantage. So, in criminal jurisprudence, if the guilt or innocence of the prisoner depends on the fact, to be found by the jury, of his having been or not, when he did the act, in some precise mental condition, which mental condition is the gist of the offence, the jury, in determining this question of mental condition, may take into consideration his ignorance or misinformation in a matter of law. Thus to constitute larceny, there must be an intent to steal, which involves the knowledge that the property taken belongs not to the latter. Yet if all the facts concerning the title are known to the accused, and so the question is merely one of law whether the property is his or not, still he may show, and the showing will be a defence to him against criminal process, that he honestly believed it his, through a misapprehension of law. A mere pretence of claim set up by one who does not himself believe it to be valid, does not prevent the act of taking from being larceny."

Sections 77, 78 extend to Judges and persons acting under their orders a protection from criminal process somewhat, though not altogether, similar to that which has already been granted to them in the case of civil suits by Act XVIII of 1850. One difference between the two Acts is with regard to officers, who are not protected under s. 78 unless they do, "in good faith, believe that the Court had jurisdiction." If the bailiff happens to be a better lawyer than the Judge or Magistrate, and sees that the order is beyond the jurisdiction, he will have no defence if he executes it. This seems very hard upon him, as he cannot refuse to execute it without resigning his office, or in the case of a soldier refusing to carry out an illegal order of a Court Martial without exposing himself to be shot. Under Act XVIII of 1850 he is protected in "the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same." Under the Police Acts (XXIV of 1859, s. 54 and V of 1861, s. 43) a Police Officer who has acted upon a Magistrate's warrant may plead it, in answer to any prosecution brought against him for so acting, and the plea is sufficient, notwithstanding any defect of jurisdiction in such Magistrate. These certainly seem more sensible provisions.

Where peons, acting under a civil process, arrested a witness on his way to Court, who, as such, was privileged *eundo morando et redeundo*, and persisted in the arrest after due notice, it was held that they were not protected under s. 78. In that case the officer issuing the warrant had jurisdiction, but the special circumstances of the case took away their jurisdiction to execute the warrant. (5 R.J. & P. 43.) And so in a case where a bailiff, in executing process against the moveable property of a judgment-debtor, broke open the gate. (3 R.C.C.C.R. 8.)

It seems very doubtful whether s. 77 protects a Judge in respect of an act done by him, in a matter where he had no jurisdiction whatever. It will be observed, that although the Legislature had in view the possibility of acts done wholly beyond the jurisdiction of the Court, the protection which is expressly granted in such a case to the Officer is not granted in any such express and positive words to the Judge. It may well be said that a Judge can only be acting judicially where he is within his jurisdiction. A High Court Judge who chose to amuse himself by hearing cases in the Mofussil could

not be said to be acting judicially, even though he fancied his commission extended so far. In Calder *v.* Halket (2 M.I.A. 293) this view was taken of a somewhat similar Statute: 21 Geo. III, c. 70, s. 24 provides,

"That no action for wrong or injury shall lie in the Supreme Court against any person whatsoever, exercising a judicial office in the Country Courts for *any* judgment, decree, or order of the said Court."

It was held by the Privy Council (p. 306) that this Statute did not protect the Judge where he gave judgment, or made an order, in the *bonâ fide* exercise of his jurisdiction, and under the belief of his having jurisdiction, where he had not; but that it only operated to the extent of "protecting them from actions for things done within their jurisdiction, though erroneously or irregularly done, leaving them liable for things done wholly without jurisdiction," (and see Pedley *v.* Davis, 30 L.J.C.P. 374; 10 C.B. N.S. 492; Kemp *v.* Neville, 31 L.J.C.P. 158; 10 C.B.N.S. 523.)

In either case the Act only applies where the defendants have used "due care and attention," (s. 52) or, in the language of the Privy Council, "where parties *bonâ fide* and *not absurdly* believe that they are acting in pursuance of Statutes and according to law." (4 M.I.A. 379; 4 B.A.C. 37; 7 B.L.R. 449. See Leete *v.* Hart, 3 L.R.C.P. 322; Griffith *v.* Taylor, 2 C.P.D. 194; 1 Mad. L.R. 89. Knowledge is the great criterion upon this point. As the Privy Council say in Calder *v.* Halket, (2 M.I.A. 309.)

"It is well settled that a Judge of a Court of Record in England, with limited jurisdiction, or a justice of the peace, acting judicially, with a special and limited authority, is not liable to an action of trespass for acting without jurisdiction, unless he had the knowledge, or means of knowledge of which he ought to have availed himself, of that which constitutes the defect of jurisdiction. (See 2 Mad. H.C. 443; 10 Bomb. H.C. 346.)

Accordingly, where the Judge took proceedings against an European over whom he had no jurisdiction, it was held that he was protected under 21 Geo. III, c. 70, s. 24, because

"It did not appear, from the evidence in the case, that the defendant was at any time informed of the European character of the plaintiff, or knew it before, or had such information as to make it incumbent on him to ascertain that fact." (Ibid., p. 310. See also Herman *v.* Seneschall, 32 L.J.C.P. 43; 13 C.B.N.S. 392; Roberts *v.* Orchard, 33 L.J. Ex. 65; 2 H. & C. 769.)

Where the error under which the Judge acts is one of law, the question will be, first, whether as a matter of fact he believed that he was acting legally; secondly, whether this belief was one which, with reference to his position and attainments, the difficulty of the matter under discussion, and the opinions entertained upon it by others, he might reasonably have held; or whether the mistake is one which is so irrational that it can only be ascribed to perverseness, malice, or corruption. (5 Mad. H.C. 345; 6 Ibid. 423.)

On the other hand the protection given to an officer under s. 77 will often depend upon whether he professes to be acting judicially or not. A Collector acting under the Madras Regulations V and IX of 1822, or under the Bengal Act X of 1859, will be protected, since he comes under the terms of s. 19. But if he were merely arranging

a revenue question he would not be acting judicially at all, and it has been held in Bengal that a Magistrate removing an obstruction under the conservancy provisions of Bengal Act VI of 1868, is not acting judicially, and is not protected from civil suit by Act XVIII of 1850, and therefore of course not from criminal proceedings under s. 77. (14 B.L.R. 254.)

The nature of the acts to which protection is given was pointed out by the Privy Council in the same case (p. 301), where they said,

"It is not merely in respect of acts in Court, acts *sedente curia*, that a Judge has an immunity, but in respect of all acts of a judicial nature; and an order under the seal of the Foujdary Court, to bring a native into that Court, to be there dealt with on a criminal charge, is an act of a judicial nature, and, whether there was irregularity or error in it, or not, would be dispunishable, by ordinary process of law."

The words "Judge" and "Court of Justice" are defined by ss. 19 and 20.

Accident in the doing of a lawful act.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

Illustration.

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

In cases of accident the two material questions are, first, as to the innocence of the act really intended, and, secondly, as to the caution with which it is done. If a horse runs away with its rider and kills some one in the road this will be merely accident; (see Holmes *v.* Mather, 10 L.R. Ex. 261) but it would be otherwise, though the immediate act was beyond the prisoner's control, if he has himself, by his own misconduct, brought such a state of things about. Where two omnibuses were racing, and one ran over a man, the defence was, that the horses were running away. Patteson, J., in charging the Jury said,

"The question is, whether you are satisfied that the prisoner was driving in such a negligent manner that, by reason of his gross negligence, he had lost the command of his horses; and that depends on whether the horses were unruly, or whether you believe that he had been racing with the other omnibus, and had so urged his horses that he could not stop them; because, however he might be endeavouring to stop them afterwards, if he had lost the command of them by his own act he would be answerable." (1 Russ. 869.)

As to the second point,

"The caution which the law requires is not the utmost caution that can be used, but such reasonable precaution as is used in similar cases, and has been found by long experience and in the ordinary course of things to answer the end." (Alison Crim. L. 143.)

Where a man discharged his gun before he went out to dinner, and on returning took it up and touched the trigger, when it went off and killed his wife, the fact being that it had been loaded in his absence, and without his knowledge, Mr. Justice Foster directed an acquittal, "being of opinion, upon the whole evidence, that he had reasonable ground for believing the gun was not loaded." (Foster Cr. L. 265.) And so, in another case, the prisoner was charged with having fired a fowling piece, loaded with small shot, in a field within an easy shot of a high road, where persons frequently passed, and in the direction of the road, and killed a girl who was passing at the time. It appeared in evidence that the shot was really a long one, being above fifty yards, and that it proved fatal only by one of the leads having unfortunately penetrated the child's eye, while the other shot hardly penetrated the skin. The Court held the death accidental in these circumstances, and so the jury found. (Alison Crim. L. 144.)

Act likely to cause harm, but done without a criminal intent and to prevent other harm.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case, whether the harm to be prevented or avoided was of such a nature, and so imminent, as to justify or excuse the risk of doing the act, with the knowledge that it was likely to cause harm.

Illustrations.

(*a*) A, the Captain of a Steam Vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C, with only 2 passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C, by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(*b*) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

This section is vary obscure. Every person is supposed to intend what he knows will happen. If he knows that an act will cause harm he is supposed to intend harm, and an intention to do harm is *primâ facie* criminal. We are not told, except by the illustrations, what are the circumstances under which such an act could be done without a criminal intention. Nor are we told whether the harm to be prevented or avoided must be harm to others, or may be merely harm to the person himself.

Looking at the illustrations, it would appear that the words "if it be done without any criminal intention to cause harm," must be taken to mean very much the same thing as the clause which follows them; and that the whole section comes to this, that where a man, reasonably believing that injury to some one is inevitable, honestly does that which he thinks will produce the smallest amount of injury, he is not to be held liable for the harm which actually results. Take, for instance, such an extreme case as that of the General who sent a small party of men to stand over a mine, with the deliberate intention that they should be blown up, in order that the rest of the division might pass over in safety.

While a person placed in his toddy pots juice of the milk bush, knowing that if taken by a human being it would cause injury, and with the intention of thereby detecting an unknown thief, who was in the habit of stealing his toddy, and the toddy was drunk by and injured some soldiers who purchased it from an unknown vendor, it was held that he was rightly convicted under s. 328, and that s. 81 was no defence. (5 Bomb. C.C. 59.)

The more important question remains, whether a man is justified in doing an injury to others to prevent an injury to himself? For instance, if he is starving may he steal? The explanation furnishes no assistance, for it does not inform us what sort of harm it is, which is of such a nature and so imminent as to justify the act. I conceive that unless in cases which come under ss. 96-105, the harm must be harm to others, and in general harm of a public character. The English Jurists are all agreed that no amount of necessity will justify a man in stealing clothes or food, however much his wants may go in mitigation of his punishment. (1 Hale 54; 2 East P.C. 698.) And the rule of Scotch law is the same. (Alison Crim. L. 674.) And so the framers of the Penal Code say, (note p. 21.)

"Nothing is more usual than for thieves to urge distress and hunger as excuse for their thefts. It is certain, indeed, that many thefts are committed from the pressure of distress so severe as to be more terrible than the punishment of theft, and than the disgrace which that punishment brings with it to the mass of mankind. It is equally certain that when the distress from which a man can relieve himself by theft is more terrible than the evil consequences of theft, those consequences will not deter him from committing theft. Yet it by no means follows that it is irrational to punish him for theft. For though the fear of punishment is not likely to keep any man from theft when he is actually starving, it is very likely to keep him from being in a starving state. It is of no effect to counteract the irresistable motive which immediately prompts to theft. But it is of great effect to counteract the motives to that idleness and that profusion which end in bringing a man into a condition in which no law will keep him from committing theft."

The only instance in which the English law admits that one man may sacrifice the rights of an innocent man for his own interests, is such a case as that of two shipwrecked men getting upon a plank which will only support one, where either may thrust off the other if he can. (1 East P.C. 294.) But here plainly the only question is whether one or both are to perish.

Lord Hale observes, however, that,

"By the Rhodian law and the common maritime custom, if the common provisions for the ship's company fail, the master may under certain temperaments break open the private chest of the marines or passengers, and make a distribution of that particular and private provision for the preservation of the ship's company." (1 Hale 55.)

And so I have no doubt it would be lawful to do in the case of a town besieged, where it was indispensable for the safety of all that the provisions should be equally divided.

Act of a child under 7 years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child above 7 and under 12 years of age, who has not sufficient maturity of understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

These sections leave the law very much as it is in England and Scotland, making allowances for the comparative precocity of children in the East. According to English law, life is divided into three periods. Up to seven years there is an absolute incapacity for crime, and this is so enacted by s. 82. After fourteen a youth is in precisely the same state as to criminal responsibility as any grown man; s. 83 makes this period of responsibility come two years earlier. In the intermediate period criminal responsibility depends upon the state of the mind, and this also agrees with s. 83. Nothing is said in the Code, however, upon the presumption which is to be drawn, in the absence of all evidence, as to whether a child in this transition stage is of sufficient maturity to be called to account for its actions or not. Possibly this was passed over as being a matter of evidence. The Commissioners, however, in their first report 1846, s. 117, say in reference to this section, "It would seem from this that *maturity of understanding is to be presumed* in case of such a child unless the negative be proved on the defence." It is difficult to see why there should be any presumption that a child who, only a week ago, was absolutely exempt from punishment on the score of immaturity, should be presumed after seven days have elapsed to be of mature mind. It is also difficult to see how the negative could possibly be proved, in the case of any child above seven. According to English law, during this second period, "An infant shall be *primâ facie*

deemed to be *doli incapax*, and presumed to be unacquainted with guilt; yet this presumption will diminish with the advance of the offender's years, and will depend upon the particular facts and circumstances of his case. The evidence of malice, however, which is to supply age, should be strong and clear beyond all doubt and contradiction." (1 Russ. 7.)

The onus of proof therefore would in England in all cases lie upon the prosecution. Accordingly, instances are to be found in which children so young as eight years have been hung, the evidence showing them to have had a perfect knowledge of the nature of their act, and a steady determination to perpetrate it. One remarkable instance is mentioned by Mr. Russell. A boy of ten and a girl of five years old were living together in the same house; the latter was missed one day, and after considerable search her body was found buried in a dunghill and shockingly mangled. The boy, when questioned, at first denied all knowledge of the matter. When the Coroner's Jury met he was again charged, but persisted still in his denial. At length, being closely interrogated, he fell to crying, and said he would tell the whole truth. He then said that the child had been used to foul herself in bed; that she did so that morning (which was ascertained to be untrue), that thereupon he took her out of her bed and carried her to the dungheap, and with a large knife, which he found about the house, cut her in the manner the body appeared to be mangled, and buried her in the dungheap, placing the dung and straw that was bloody under the body and covering it up with what was clean; and having so done, he got water and washed himself as clean as he could. He was ultimately convicted upon his own confession, corroborated by other circumstances, and his case was referred for the opinion of all the Judges, who unanimously agreed, "that there were so many circumstances stated in the report which were undoubtedly tokens of what Lord Hale calls *a mischievous discretion*, that he was certainly a proper subject for capital punishment, and ought to suffer; for it would be of a very dangerous consequence to have it thought that children may commit such crimes with impunity." (Russ. 8; Arch. 12.) Practically, the boy was not executed, and probably the humane spirit of the present age would refuse under any circumstances to carry out the extreme sentence of the law upon one so young. Still, the case is of value as exemplifying the maxim, *malitia supplet ætatem*; a mischievous discretion makes up for want of years.

There is another point which is not referred to in s. 83, possibly as being also a matter of evidence: I refer to the invincible presumption raised by the English law, that up to fourteen there is a physical incapacity for the crime of rape. (Arch. 13.) It will be observed that the only ground of exemption under s. 83 is mental immaturity; but where a particular crime involves a certain organic power which is ordinarily wanting up to a certain age, it seems only fair to raise a presumption that up to that age the crime cannot be committed. Admitting the principle to be a correct one, it may be doubted whether exactly the same time would be fixed in this country, taking the precocious maturity of Hindoos into consideration. With respect to offences upon girls, the legislature seems to assume that they come to maturity two years earlier here than in Europe. (Compare the Indian Act 9, Geo. IV, c. 74, s. 65 with the corresponding English one

9 Geo. IV, c. 31, s. 17.) And possibly the same view may be taken in the case of a boy charged with rape. Where a boy, only ten years old, was convicted by the Futwa of rape on a girl only three years old, the Court of N. A. viewed it an attempt only, and punished it as a misdemeanor, with one year's imprisonment. (1 M. Dig. 190, § 636.)

In some of the American Courts the conclusive presumption against male puberty before fourteen is rejected, and evidence is admitted to establish the existence of physical capacity. (Bishop § 466.)

Under the Cr. P.C., s. 318, where any person under sixteen shall be sentenced to imprisonment for any offence, the Court passing the sentence is authorized to direct the confinement of the offender in a reformatory recognised by Government, instead of consigning him to jail.

Act of a person of unsound mind.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Every one at the age of discretion is by law presumed to be sane and accountable for his actions, unless the contrary be proved. And if a lunatic has lucid intervals the law presumes the offence to have been committed in a lucid interval, unless it appears that he was actually under the influence of his distemper at the time (Russ. 11), or that a fit of madness had existed a very short time previously. (Alison Cr. L. 652, 659.) And in all cases, where the commission of the crime is admitted, but this, or any other incapacity, is alleged, the onus of proving it lies upon those who set it up, and if they fail to prove it affirmatively to the satisfaction of the Judge, he is bound to convict. (Reg. *v.* Stokes, 3 C. & K. 185.)

Defect of understanding is of three sorts—idiocy, lunacy, and that which is merely temporary and artificial, being brought on by drunkenness, opium-eating, or such like cause.

Idiocy is the ordinary case of one who has never had any reason, or lucid interval, from his birth. It is generally easy of proof, as being a matter of notoriety, and of course when established is a complete defence.

Lunacy presents much greater difficulties on account of the numberless phases which it presents, and the imperceptible degrees by which it dwindles down into something little beyond eccentricity, or oddity of manner. In the majority of cases, where a prisoner is shown to be a violent madman, dangerous to all around him, or to be mentally estranged from mankind, incapable of thinking or acting like a human being, the matter is simple enough.

Providence has not left him that amount of reason which is necessary to make him accountable for his acts. If this state of mind is subject to lucid intervals, the further question is introduced whether the act was perpetrated in a lucid interval or not. But often the insanity is of a different type; the delusion is only partial—a *monomania* as it is called—which affects him on particular points or in respect to particular persons—leaving him as to other matters in the ordinary state. How is his act to be judged of when it is connected with the subject of his delusion? How, when it has no connection with it? May a man justify a larceny on the ground of a belief that he is Emperor of China, or can he be acquitted of murder because he conceived that the murdered man was an enemy to his country?

These points have all undergone repeated discussion, and probably the most clear and lucid treatment of the entire matter will be found in the answers given by the English Judges to certain questions proposed to them by the House of Lords in the case of Reg. *v.* M'Naughten, and quoted in Archbold. (15-17.) The questions were as follows:—

"1st. What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit?

"2nd. What are the proper questions to be submitted to the jury when a person, alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime, (murder for example,) and insanity is set up as a defence?

"3rd. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

"4th. If a person, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is he thereby excused?

"5th. Can a medical man, conversant with the disease of insanity, who never saw the prisoner previous to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to the law, or whether he was labouring under and what delusion at the time?"

To these questions the Judges (with the exception of *Maule, J.*, who gave on his own account a more qualified answer) answered as follows:—

To the first question:—"Assuming that your Lordship's inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion, that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your Lordships to mean the law of the land."

To the 2nd and 3rd questions:—"That the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved

to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put to the party's knowledge of right and wrong, in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and explanations as the circumstance of each particular case may require."

To the fourth question :—"The answer to this question must, of course, depend on the nature of the delusion; but making the same assumption as we did before, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased has inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

And to the last question :—"We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

It is a wise caution which was given by Baron Hume not "to receive as evidence of madness the atrocity or brutality of the act itself that has been done, though there has been no previous symptom of the disease." (Alison Crim. L. 653.) In many remarkable trials in England an attempt has been made to set up insanity on this ground, but the Judges have always strenuously resisted the introduction of a principle, which would make a criminal safe in proportion to the barbarity of his acts. Mere crime, however savage and purposeless, is unfortunately only too consistent with all that we know of human nature. And it is also most necessary to remember, that "mere oddity of manner, a half craziness of disposition, if unaccompanied by an obscuring of the conscience will not avail the prisoner." (Alison Crim. L. 655.) The evidence must prove an alienation of reason, perverting the moral sense. (13 B.L.R. Appx. 20.)

The case of persons who are deaf, or dumb, or both, is occasionally one of much difficulty. One who was deaf and dumb from birth used to be assumed to be also an idiot, since he had no means of acquiring information as to the law of the land, or of learning the distinction between right and wrong. This presumption however might be rebutted by showing that he had the use of his understanding, and of course would vanish, if it were proved that he had been fully instructed, as many have been by the well-known discoveries in the art of teaching such persons. Where, therefore, such a person, or a person merely deaf, or merely dumb, stands charged with an offence, three states of fact are possible. The evidence may show that he is actually destitute of such an amount of reason as makes him a responsible being. In that case he would be dealt with as an ordinary idiot. Or he may appear to have sufficient intelligence, and there may also be means by writing, or by such a system of signs as he understands, of communicating with him, so as to convey to him the nature of the charge and evidence against him, and so as to admit of his making a defence. In that case his trial would proceed, and he might be convicted and punished. Of course very great caution would be requisite before such a conviction could be considered satisfactory. An intermediate state of things would arise, where the evidence established his mental intelligence, but no means existed of communicating with his mind, or of enabling him to communicate with the witnesses or the Court. In such a case the old English practice used to be, let the trial proceed, the Judge watching the case on behalf of the prisoner. (1 Russ. 11, note m.) It is evident, however, that a prisoner tried in that manner might be convicted on a charge of whose nature he was utterly ignorant, and to which he could have given a complete answer. The modern course is that which was adopted in Rex *v.* Dyson (7 C. & P. 305) and followed in R. *v.* Pritchard, (Ibid. 303) and recently in Reg *v.* Berry, (1 Q.B.D. 447.) There, Alderson, B. said to the jury, "There are three points to be inquired into :—First, whether the prisoner is mute of malice or not ; secondly, whether he can plead to the indictment or not ; thirdly, whether he is of sufficient intellect to comprehend the course of proceedings on the trial, so as to make a proper defence—to know that he might challenge any of you to whom he may object—and to comprehend the details of the evidence which in a case of this nature must constitute a minute investigation. Upon this issue, therefore, if you think that there is no certain mode of communicating the details of the trial to the prisoner, so that he can clearly understand them, and be able properly to make his defence to the charge, you ought to find that he is not of sane mind. It is not enough, that he may have a general capacity of communicating on ordinary matters. The case I have mentioned was considered by several of the Judges, and they approved of the course adopted by Mr. Justice J. Park."

In all the above cases the jury found that the prisoner was of non-sane mind, in the sense of being unable to take an intelligent part in the proceedings, and the Court ordered the prisoner to be confined in prison during the pleasure of the Crown under 39 & 40, Geo. III, c. 94, s. 2. The Crim. P.C. 1872 now provides (s. 186, cl. 3) that "if an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the

inquiries or trial; and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case and the High Court shall pass thereon such order as to it seems fit." (Act X of 1875, s. 130.)

"Under no circumstances should a party accused of an offence, being at the time of unsound mind and incapable of making his defence, be examined by a Magistrate, or committed for trial." (3 R.J. & P. 175.)

The Crim. P.C. Chap. XXXI contains rules for the treatment of lunatics. Where a prisoner, against whom a charge is preferred is shown to be of unsound mind and incapable of making his defence, the case is to be postponed, but to continue pending, and the prisoner is to be released on bail, or kept in custody according to the character of the offence charged. (ss. 423—428; Act X of 1875, ss. 120, 123, 127.)

"Whenever any person is acquitted, upon the ground that at the time at which he is charged to have committed an offence he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the finding shall state especially whether he committed the act or not." (s. 429, Act X of 1875, s. 124.)

The case is then to be reported to the Local Government, who may commit the person to custody in a lunatic asylum or other safe place (s. 430) or hand him over to his friends for safe keeping. (s. 434.) If committed to a lunatic asylum under s. 430 he can only be released upon the report of a commission, to the effect that "they consider that he can be set at liberty without danger to himself or any other person." (s. 433.) See too Act X of 1875, ss. 125—129.

In addition to the powers conferred by this Act, provision has been made by Acts 14 & 15 Vict. c. 81, for the removal from India of persons charged with offences, and acquitted on the ground of insanity. Section 1 makes it lawful for the person or persons, administering the Government of the Presidency in which such persons shall be in custody, to order such person to be removed from India to any part of the United Kingdom, there to abide the order of Her Majesty concerning his or her safe custody, and to give such directions for enabling such order to be carried into effect as may be deemed proper.

Section 4 provides for the recovery from the lunatic of the expenses so incurred.

See also Act XXXVI of 1858 as to lunatic asylums, and Act II of 1867 as to removal of lunatic prisoners from jail to a lunatic asylum.

Act of a person incapable of judgment by reason of intoxication caused against his will.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law, provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Section 86 raises, but does not entirely settle, the question, how far evidence of intoxication is admissible where the element of knowledge or intent enters into the definition of an offence. For instance, it has been ruled in America,

"That where a peculiar knowledge was an element of the guilty act, requiring nice discrimination and judgment, as in passing a counterfeited bank bill knowing it to be counterfeit, and where deliberation and premeditation are necessary ingredients of the crime, as in murder of the first degree, evidence of intoxication is admissible and proper to be taken into consideration by the jury, in determining the question as to the guilty knowledge in the one case, and as to the deliberation and premeditation in the other." (Bishop § 499, n. 3.)

The Penal Code requires it to be assumed that a man voluntarily drunk had "the same knowledge as *he would have had* if he had not been intoxicated." Therefore, where from a given state of facts the law assumes a particular knowledge, or that knowledge is a matter of necessary inference, intoxication cannot be set up. For instance, if a man shoots another he would not be allowed to say that he was drunk, and did not know that he held a pistol in his hand, or that the effect of discharging it would be to cause death. So, if he killed another under circumstances which, had he been sober, could have created no alarm in his mind, he would not be allowed to plead that through intoxication he imagined that his life was in danger. But where it is incumbent on the prosecution to make out specific knowledge of a particular fact, and where the circumstances raise no necessary inference of it, the rule might be different. For instance, if a man is charged with passing off a counterfeit rupee, knowing it to be such, the knowledge must be made out by the prosecution, and is not necessarily to be assumed, though it might be inferred from the mere fact of passing the coin. Suppose the fact to be established that the man had several good rupees in his pocket, but knew also that he had one bad rupee, still it would have to be made out that he knew he was paying the bad rupee, not merely that he had the means of knowing, if he had taken better precautions. It would be clearly admissible to show that he was in a hurry to catch a train, and therefore did not examine the coin, and I can see no reason why evidence of his intoxication should not be admissible for the same purpose. Hurry is a state of mind voluntarily brought about just as much as drunkenness.

Section 86 lays down no rule as to the inference of intent in cases of intoxication. A man is assumed to intend the natural or necessary

consequences of his own act, and in the majority of cases the question of intention is merely the question of knowledge. If I strike a man on the head with a loaded club, I am assumed to know that the act will probably cause death, and, if that result follows, I am assumed to have intended that it should. As the drunkard is assumed to have had the knowledge, he must necessarily be assumed to have had the intention, since, assuming the knowledge, the law will allow no other explanation of the act to be given. But sometimes, in determining the quality of an offence, evidence is necessary of a specific existing state of mind, which must be found as a fact, and cannot be assumed. For instance, supposing a fatal blow to be struck under circumstances of grievous provocation; it might be shown that, notwithstanding the provocation, the defendant had acted, not under its influence, but from a pre-conceived malicious resolve to kill. If so, the offence would be murder. But the mere act of the deadly blow would not be sufficient evidence for that purpose. Given the provocation, the legal inference derivable from the character of the blow would be exhausted in making the act be culpable homicide not amounting to murder. Evidence of a different state of mind would be required to constitute the graver charge. In this state of things intoxication might be an answer to the charge of murder. As Mr. Bishop observes, (§ 493.)

"The better doctrine is that if, for instance, the question is, whether the killing arose from a provocation given at the time, or from previous malice, evidence of the prisoner's having been too drunk to carry this previous malice in his heart may be admitted. And the consideration is not to be withheld from the jury that his drunkenness may render more weighty the presumption of his having yielded to the provocation, rather than to the previous malice; because of the fact, that the passions of a drunken man are more easily aroused than those of a sober one. This doctrine differs from that untenable one, of drunkenness excusing or palliating either the passion or the malice. So, intoxication sheds light on the question, whether expressions used by the prisoner sprang from a deliberate evil purpose, or were the mere idle words of a drunken man. This evidence, moreover, assists in determining whether the defendant acted under the belief that his property or person was about to be attacked."

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

87. Nothing, which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person, who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in

the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death, done by consent in good faith for the benefit of a person.

88. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

Act done in good faith for the benefit of a child or person of unsound mind, by or by consent of guardian.

89. Nothing, which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided—

Provisoes.

First.—That this exception shall not extend to intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing grievous hurt, or to the at-

tempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear or misconception.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception—Or,

Consent of a child or person of unsound mind.

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

The latter part of this section will introduce an important divergence from the doctrines of English law, in reference to crimes which depend upon absence of consent. For instance, both by English law and under the Code (s. 375) a man commits rape who has sexual intercourse with a woman without her consent. But the English jurists hold that mere physical consent is sufficient, and that even though the woman is an idiot, still if she consents from mere animal instinct the offence is not committed. (Reg. *v.* Fletcher, 28 L.J.M.C. 85; Bell 63; Reg. *v.* Fletcher, 1 L.R.C.C. 39.) But the Indian law is not satisfied without the intelligent consent of a woman who is able to understand the nature and consequences of the act. An idiot may be as capable of ascending to sexual intercourse as any other female animal. But it is plain that the nature and consequences of illicit intercourse with a woman are very different from what they would be in the case of a cow. It is precisely this differ-

ence which the Indian law requires that she should be able to understand, and, understanding it, still to consent.

So as regards assaults, both by English law and under the Code (s. 350) the absence of consent is an essential ingredient in the offence. But the English jurist treats consent as a simple fact, and therefore holds that the consent even of a child under ten years of age to what would otherwise be an indecent assault, prevents the act being indictable, (Reg. *v.* Johnson, 34 L.J.M.C. 192; Reg. *v.* Beale, 1 L.R.C.C. 10) provided he knows, as a fact, what he is consenting to, and does not merely submit, but consent. (Reg. *v.* Lock, 2 L.R.C.C. 10, post note to s. 354.) But by the Code, the consent of a person who is under twelve years of age is immaterial. Therefore, where the act, if done without consent, would be an offence, the fact that such a consent was given by a child under twelve years of age would be no justification, unless the contrary appears from the context. The contrary does appear from the context in cases of rape, where the age of consent is reduced from twelve years of age to ten years.

Acts which are offences independently of harm caused to the person consenting, are not within the exceptions in Sections 87, 88, and 89.

91. The exceptions in Sections 87, 88, and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for the benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. Provided—

Provisoes.

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, in the committing of which offence it would not extend.

Illustrations.

(*a*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b*) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of Sections 88, 89, and 92.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Communication made in good faith.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Sections 87—93 apply to cases in which an act likely to result in dangerous consequences is done to a person with his permission or for his benefit. These exceptions are as follows:—

1. Acts not intended, or known to be likely to cause death, or grievous hurt, are not offences, when done to a person above eighteen, who has consented to suffer, or run the risk of the harm. (s. 87.)

The phrase "grievous hurt" is defined in s. 320. Of course, every man is assumed to contemplate that harm which is the probable result of the weapon he uses; therefore, if two persons were to fence with naked swords, though in the most friendly spirit, and one were to kill the other, this would be culpable homicide. (1 East P.C. 268; Foster 260.) It is to be observed that this exception only applies where the person suffering the harm is above eighteen, and, therefore, a boxing match between two school-boys would be criminal. But it would not be criminal for a parent or master to inflict moderate punishment upon a child or apprentice, for this is in itself a lawful act and comes under the exception in s. 79. (Arch. 568.) Nor is any act, whether with or without consent, an offence, if the harm is of a very slight character. (s. 99.)

The harm done must not be different in kind or degree from what the person has agreed to run the risk of. Therefore, if two men were to begin boxing with gloves, one would not be justified in throwing aside the gloves and striking with his fist. Similarly, either of the players in a fencing match would be bound to discontinue the moment the button fell off his foil. On the same principle, all the recognised rules to the contest must be observed, for they enter into the estimate of the risk. Where two men are sparring, every blow must be fair. And so it is laid down in East, (1 E.P.C. 269.)

"That in cases of friendly contests with weapons, which, though not of a deadly nature, may yet breed danger, there should be due warning given that each party may start upon equal terms. For, if two were engaged to play at cudgels, and the one made a blow at the other, likely to hurt, before he was upon his guard, and without warning, and death ensued, the want of due and friendly warning would make such act amount to manslaughter, but not to murder, because the intent was not malicious."

It may be questioned whether a prize-fight between two adults, fairly conducted according to English rules, would be protected under this section. Notwithstanding the apparent ferocity of the contest, it may well be argued, that it is not on the whole likely to cause death or grievous hurt; certainly the annals of boxing are in favour of such a position, where the combatants are at all matched. On the other hand there is no doubt that the law of England, which countenances such sports as fencing, wrestling, and cudgel playing, always treated prize-fighting as absolutely illegal, and even extended the criminality to every one present, and countenancing the trans-

action. (1 Russ. 854.) To a certain extent the greater danger of prize-fighting may be the reason for the difference, but probably the real cause is the publicity with which such contests are attended, and the disorderly crowd which they collect. Accordingly, in cases where no death ensued, the English practice is to indict the offender for riot and breach of the peace. (Foster 260; Reg. *v.* Billingham, 2 C. & P. 234; Reg. *v.* Perkins, 4 C. & P. 537.) This being so, a prize-fight would still be criminal under s. 91, independently of any injury intended, or accruing to the parties engaged.

2. No act, not intended to cause death, is to be an offence, if it is done for the benefit of the person suffering it; first, with the consent of such person, being qualified to give such consent, and giving it of his own free will, with full knowledge of all the facts. (ss. 88, 90.) Secondly, in the case of persons not capable of giving consent, if the consent of the person lawfully in charge of them is obtained (s. 89); or, thirdly, even without obtaining consent, where under the circumstances such consent could not possibly be obtained. (s. 92.)

The sections will have to be very liberally construed, or they may prove most dangerous to medical practitioners, who must take steps, often of a most dangerous character, upon the spur of the moment.

No act which is intended to cause death will be protected. And therefore, a man who killed a woman in order to save her from being ravished, or who supplied another with poison in order to enable him to escape from death upon the scaffold, would not be within the exception. (See ss. 305, 306.) But it is no offence to do an act before the birth of a child, which prevents its being born alive, or causes it to die after its birth, when the act is done in good faith for the purpose of saving the mother's life. (s. 315.)

Mere pecuniary benefit will not be sufficient. (Exp. s. 92.) I once knew a strange case, in which a man who had a life-estate in himself, entailed upon his children, with reversion to himself in fee, wanted to raise a loan upon the security of his estate. He had no children, but as it was possible he might have issue, the security was rejected. He hit upon the strange idea of having himself castrated in order to make possibility of issue extinct! I need hardly say that the proposal to effect this singular covenant against encumbrances was not sanctioned by his lawyer. The performance of such an operation for such a purpose would, of course, be illegal under this Code; first, because the benefit is not such as is contemplated by the act; secondly, because grievous hurt, such as emasculation is declared to be, can only be done for the purpose of preventing death or other grievous hurt, or for cure of a disease. (1 R.C.C.R. 12.) And, therefore, a soldier who should aid another in mutilating himself, in order to procure his discharge, would also be guilty.

As to the consent which is necessary, I conceive that every proper consent should always be presumed, where the act is in itself proper and beneficial; as, for instance, a surgical operation. And this is in accordance with the principle of the law of evidence,

that innocence will always be presumed, and therefore where the act is *primâ facie* lawful, but may be unlawful by omitting certain precautions, it will be assumed that those precautions have been taken, until the contrary is shown.

"Thus, where the plaintiff complained that the defendant who had chartered his ship had put on board an article highly inflammable and dangerous, without giving notice of its nature to the master or others in charge of the ship, whereby the vessel was burnt, he was held bound to prove this negative averment." (1 Tayl. Ev. § 91.)

Even where no actual consent could possibly have been given, as in the case of a patient who had not been informed of the necessity of any operation, and who was suddenly given chloroform, I have no doubt that the mere fact of his having placed himself under medical care carried with it an implied consent to do everything necessary and proper for a cure.

The contrary presumption would arise where the act was in itself apparently unlawful. Therefore, a person who had killed or wounded another in a struggle, and who pleaded that it was the accidental result of an amicable contest, entered into by mutual consent, would have to prove his plea. (1 Tayl. Ev. § 96.)

A more difficult case, but one which might easily happen, would be where the party expressly withheld his consent, though the act were admitted to be for his benefit, and for the sole purpose of saving his life. Such a case might possibly arise, where a timid patient could not nerve himself to undergo an operation, however necessary. Such a case is not provided for by this act, and should it arise, the surgeon, if he wished to be absolutely safe against subsequent charges, would be compelled to leave the sufferer to his fate. Of course, if such a charge were brought, and a conviction procured, the punishment would be no more than nominal.

Section 93 was intended by the Commissioners to guard against a possibility which their ingenuity foresaw, though it is hardly likely ever to become a reality. The words of s. 299 are so wide, that a person might commit the offence of culpable homicide by suddenly communicating disastrous intelligence to a person whose state of health was such that the shock might readily prove fatal. It seemed to the Commissioners that the section ought not to be altered so as to exclude such an act from the list of offences, because, if a person maliciously, and for the purpose of killing or injuring another, imparted a shock of this species, the act was as truly criminal as if a tangible weapon had been used. This section was therefore introduced to protect the innocent, without unduly cloaking the guilty. When we remember, however, that the words "good faith" imply due care and attention, and that it is expressly stipulated that the communication shall be made for the benefit of the person to whom it is addressed, it may be doubted whether the danger, supposing there to be any, is much diminished. (See 1st Report, 1846, §§ 243—249.)

The clause may also be applied in cases which would otherwise come under the head of criminal trespass, (s. 441) or insults, (s. 504.)

94. Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Act to which a person is compelled by threats.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person, seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools, and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

This section differs slightly from the doctrines of English and Scotch law. By English law, it would appear that a threat of actual death, impending at the moment, would be an excuse for the committal of any crime except murder. In the last named case, Lord Hale lays it down that,

"If a man be desperately assaulted, and in peril of death, and cannot otherwise escape, unless, to satisfy his assailant's fury, he will kill an innocent person then present, the fear and actual force will not acquit him of that crime and punishment of murder, if he commit the fact; for he ought rather to die himself than kill the innocent." (Hale 151.)

But actual present and continuing fear of death has been held as an excuse for joining in a riot, for giving supplies to rebels, and assisting them in minor acts of treason, and even for joining and marching with rebels. (1 Russ. 32; 1 Hale 49—51, 139.) But in no case will fear of injury to house or goods, or apprehension of personal violence short of death, be any excuse whatever; (1 Russ. 17; Reg. *v.* Tyler, 8 C. & P. 620) nor will even threats of death avail the prisoner, where time permits him to procure the protection of the law. (1 Hale 51.)

By Scotch law it is laid down that,

"The excuse of compulsion will only avail if the prisoner was in such a situation that he could not resist without manifest peril to his life or property." (Alison Crim. L. 672.)

Accordingly, the plea of compulsion was held sufficient upon indictments for high treason and piracy. In all the cases cited by Mr. Alison the fear was a fear of immediate death, and I am inclined to think that the proposition as to peril to property being sufficient justification for crime is too widely stated.

Under s. 94 the compulsion must be such as is required by English law, and in the cases of murder and waging war against the Queen (s. 121), even this plea will be insufficient.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Act causing slight harm.

This is a novel, but a useful section. It is plain that the "person of ordinary sense and temper" must be taken from the class to which the actual complainant belongs. Gross language and even personal violence may be so common among members of a particular class of the community, that such acts may be done by one to another without any idea that any just ground for complaint is given. Similar acts in a different rank of life might necessarily exhibit an intention to insult and injure. The section is valuable as allowing the Judge a means of evading the strict letter of the law, whenever merely litigious charges are brought under such Sections as 294, 295, 499, 503, &c.

The original framers of the Code in their notes (p. 81) say of this clause, that it,

"Is intended to provide for those cases which, though from the imperfections of language, they fall within the letter of the penal law, are yet not within its spirit, and are all over the world considered by the public, and are for the most part dealt with by the tribunals as innocent. As our definitions are framed, it is theft to dip a pen into another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommode him by pressing against him in getting into a carriage. There are innumerable acts without performing which men cannot live together in society—acts which all men constantly do and suffer in turn, and which it is desirable they should do and suffer in turn, yet which differ only in degree from crimes. That these acts ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the Judges to except them in practice."

For instance, the High Court of Bombay reversed a conviction for theft under this section, where the accused was sentenced to seven days' imprisonment for picking pods, value 3 pie, off a tree standing in a waste piece of Government land. (5 Bomb. H.C. Cr. 35.) The case might have been different had the produce been taken from a tree on the property of a private person.

Of the Right of Private Defence.

Nothing done in private defence is an offence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in Section 99, to defend—

First.—His own body and the body of any other person, against any offence affecting the human body.

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

Right of private defence against the act of a person of unsound mind, &c.

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a*) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b*) A enters by night a house which he is legally entitled to enter. Z in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A, under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

99. *First.*—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public

servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

As, for instance, when a police officer attempted without a search-warrant to enter a house to search for stolen property, it was held that resistance to him was unlawful, and not justified on the ground of private defence. (7 Bomb. C.C. 50.)

Second.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

Third.—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.

Fourth.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows or has reason to believe, that the person doing the act is acting by such direction; or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—

When the right of private defence of the body extends to causing death.

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault—

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault—

Thirdly.—An assault with the intention of committing rape—

Fourthly.—An assault with the intention of gratifying unnatural lust—

Fifthly.—An assault with the intention of kidnapping or abducting—

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any harm other than death.

When such right extends to causing any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

Commencement and continuance of the right of private defence of the body.

103. The right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely—

When the right of private defence of property extends to causing death.

First.—Robbery.

Secondly.—House-breaking by night.

Thirdly.—Mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property.

Fourthly.—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary

When such right extends to causing any harm other than death.

causing of death, but does extend, subject to the restrictions mentioned in Section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105. *First.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Second.—The right of private defence of property against theft continues till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

Third.—The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

Fourth.—The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifth.—The right of private defence of property against house-breaking by night, continues as long as the house-trespass which has been begun by such house-breaking continues.

Right of private defence against a deadly assault when there is risk of harm to an innocent person.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempts to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

The right of private defence extends to defence against injuries either to person or property, whether the injury affects the person or property of him who stands on his defence, or of some one else. (s. 97.)

The principle of the right is, that it shall only be exercised when and so far as is necessary.

In a case in Bengal, the servants of an Indigo factory who had a right to sow land, but had been interfered with by the villagers, went out in force, armed with deadly weapons, in order to effect their object, and the villagers went out also armed to meet them; it was held that in the affray which followed neither party could plead the right of private defence of property, as there was a Police Station near at hand, and each party could have applied for the protection of the law. (3 R.C.C. Circ. 21.) But mere resistance by a party lawfully in possession of land to an attempt made by others to expel him by force is lawful. (2 B.A. Cr. 16.) Accordingly, where persons who were in peaceful possession of land were attacked by a party armed with sticks who came to cut the crops, and there being no time to get the aid of the police, the persons in possession armed themselves with sticks, and a riot ensued, and one of the aggressors received a blow from the effects of which he died; the prisoners were acquitted, it being held that the violence which they had used did not exceed their right of private defence of property. (6 B.L.R. Appx. 9.)

The right of private defence will seldom be necessary when the act is done by a public servant, acting in good faith under colour of his office. For in such cases an appeal to superior authority will always redress the grievance, if the act be not strictly justifiable. But, sometimes, the act may be one which would not admit of redress. For instance, if an attempt were made to flog or execute the wrong man. Here, resistance would be admissible. (s. 99.)

The expression "public servant" is defined in s. 21. It will be observed however that the exemption does not in terms apply in favor of persons who in good faith assist a public servant, whether he is or is not justified in his conduct. But it is plain that in practice it does so apply. Suppose the case of a constable who calls on the bystanders to help him in arresting a supposed burglar. Here the "act done" is the attempt to arrest, and resistance to this entire act is forbidden, and of course equally forbidden whether the resistance takes the form of knocking down the constable, or the persons whose assistance is necessary to him. And explanation 2, s. 99, expressly refers to acts done "by direction of a public servant."

Nor does this section of the Act at all apply to the case of private persons acting lawfully in discharge of a public duty, or supposing themselves to be lawfully so acting. The question, however, will

always resolve itself into a further question, whether the act of the private person was really lawful or not. For instance, a private person may without warrant arrest a man who has actually committed a murder, but he may not arrest him upon suspicion, if that suspicion turns out to be unfounded. (1 Russ. 799.) If, then, the act is lawful it cannot be resisted by any species of force; for the lowest species of force must amount to an assault, and an assault cannot be justified on the score of provocation, "by anything done in obedience to the law." (s. 352.)

It may be argued, indeed, that even where a private person does an act which he *bonâ fide* believes to be justifiable; as, for instance, the arrest of an innocent person honestly believed to be a murderer, that the right of private defence does not exist. It may be argued that s. 97 only gives the right of private defence against *offences*, and that by ss. 76 and 79 acts done by a person who, under a mistake of fact, *bonâ fide* believes himself to be bound or justified by law in doing the act are not offences. But it will be observed that in s. 99, the word used throughout is *act* not *offence*. The cases put in explanations 1 and 2, s. 99, are cases of acts which are not offences. It is plain also that the person who stands upon his defence cannot judge of the motives, but only of the conduct of his assailant. As he is allowed to resist a public officer, whom he does not know to be such, *a fortiori* must he be allowed to resist one who is not a public officer, and who is acting illegally. And even where the private person is acting with strict legality, it will, in accordance with the spirit of explanation 2, be necessary to show that his resistance was made with full knowledge that the person arresting him was acting on behalf of the law.

Persons lawfully executing legal process should always commence by showing their warrant, if they have any; or if they have none, should plainly announce their object and the authority under which they act. This is necessary both for their own protection, and in justice to those with whom they are dealing. The mere showing by a constable of his staff of office is sufficient, as an intimation of his character. But when a bailiff rushed into a bed-chamber early in the morning, without giving the slightest intimation of his business, and the gentleman, not knowing him, wounded him with his sword in the impulse of the moment, this was held not to be murder, as there was nothing to show the prisoner that the deceased was acting by authority of the law. (Arch. 555.)

The offences for which a Police officer may arrest without warrant are stated in column 3 of the Schedule annexed to the Cr. P.C. He may also arrest without warrant.

"*Firstly*.—Any person who in the sight of such Police officer commits a cognisable offence. (See definition in s. 4.)

"*Secondly*.—Any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any such offence.

"*Thirdly*.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

"*Fourthly*.—Any person who has been proclaimed under this act, or in a District or Police Gazette or notification.

Fifthly.—Any person who is found with property in his possession, which may reasonably be suspected to be stolen property.

"*Sixthly.*—Any person who shall obstruct a Police officer while in the execution of his duty, or who escapes from lawful custody, and

"*Seventhly.*—Any person reasonably suspected of being a deserter from Her Majesty's Army, or Her Majesty's Indian Army." (Cr. P.C., s. 92.)

Similar powers of arrest are given to officers in charge of Police Stations in regard to vagabonds and criminal characters. (Cr. P.C., s. 94) and to all Police officers in regard to persons who are designing to commit any cognisable offence, if they cannot otherwise be prevented. (Cr. P.C., s. 97.)

"Every person is bound to assist a Magistrate or Police officer demanding his aid in the prevention of a breach of the peace, or in the suppression of a riot or affray, or in the taking of any other person whom such Magistrate or Police officer is authorized to arrest." Cr. P.C., s. 91.) See also s. 481.

"The Magistrate may also at any time direct the arrest in his presence of any person for whose arrest he is competent to issue a warrant." (Cr. P.C., s. 166.)

"Any private person may arrest any person who, in his view, commits a non-bailable and cognisable offence." (Cr P.C., s. 105.) Also the master or mate of a British Merchant Vessel may without warrant arrest deserters, and may require the Police to aid in so doing. (Cr. P.C., s. 106.)

The right of voluntarily causing death in self-defence is only granted in the case named in ss. 100 & 103. A death is said to be voluntarily caused when it is actually intended, or when such means are used as would necessarily or naturally produce death. (See s. 39, *ante* p. 25.) It would be no justification for a man who shot another through the head, or ran him through the body, to say that he did not intend to cause his death. And so, where a park-keeper, having found a boy stealing wood, tied him to a horse's tail and dragged him along the park, and the boy died of the injuries he received, this was held to be murder. (Arch. 544.)

Where the defence is that the party was about to commit such a crime as would justify his death, this must be proved; not, indeed, so as to establish the fact conclusively, but so as to prove that the party had such grounds for supposing violence was intended, as would warrant a rational man in so acting. Where a prisoner was in possession of a room at a tavern, and several persons insisted on having it and turning him out, which he refused to submit to, whereupon they drew their swords upon him and his companions, and he then drew his sword and killed one of them; this was held to be justifiable homicide; not that he would have been authorized to act so, in maintaining his possession of the room, which under those circumstances might fairly be questioned, but because the facts rendered it apparently necessary in self-defence. (1 Russ. 897.) Where, however, a servant, set to watch in his master's garden at night, shot a person whom he saw going into the hen-roost, it was decided that he was not justified in so doing, unless he had fair grounds to believe his own life to be in actual danger. (Arch. 547.)

Even in cases where the nature of the crime which is committed

or contemplated would justify the voluntary infliction of death, such an act would be unlawful if the crime could be prevented by milder means. (s. 99, cl. 4.)

Accordingly, in Bengal, the slaying of a robber after he had been taken into safe custody was held to be wilful murder. (1 M. Dig. 182, § 577.) And so, in Bombay,

"The prisoner killed with a sword a thief he found at night stealing his chillies in a field. Held by the S. F. U. that this was not a case of justifiable homicide, but of culpable homicide; it being proved that the prisoner's own life was not in danger, that the deceased offered no resistance, and did not even attempt to escape, and that the prisoner might have apprehended the deceased without resorting to extreme means, which the circumstances of the case did not warrant." (3 M. Dig. 119, § 109.)

And so, where a person finding a man in the act of committing house-breaking by night, called for a weapon and killed him, and it appeared that the house-breaker was at the time trying to escape, but probably would have been unable to escape, and that the prisoner called for the weapon for the express purpose of killing him, the High Court of Bengal ruled that the act was murder. (1 R.C.C.C.R. 68.)

The right of defence begins when a reasonable apprehension of danger commences; (ss. 102 & 105) that is, when there is a reasonable apprehension of such danger as would justify the particular species of defence employed. A man who is attacked by another who wears a sword is not justified in killing him on the chance that he may use the weapon, but if he sees him about to draw it, it is not necessary to wait till he does draw it. So, a man who hears a burglar busy opening the lock of the house door, may fire at him before he gets in. But he would not be justified in firing at a man he saw prowling about his compound at night, unless he had reasonable grounds to suppose that party was about to force his way into the house.

The right of defence ends with the necessity for it. Where the injury is to the person, the right ceases with the apprehension of danger; (s. 102) that is, as said before, with the apprehension of such danger as would justify the particular form of violence employed in self-defence. Where a man is attacked by another with a sword, he is, as we have seen, justified in killing him. But if the sword is broken, or the assailant is disarmed, so that all apprehension of serious harm is over, the party attacked would be committing murder or culpable homicide at the least, if he were still to proceed to the death of his opponent. But a man who is assaulted is not bound to modulate his defence, step by step, according to the attack, before there is reason to believe the attack is over. "He is entitled to secure his victory, as long as the contest is continued. He is not obliged to retreat, but may pursue his adversary till he finds himself out of danger; and if, in a conflict between them, he happens to kill, such killing is justifiable." (1 Russ. 895.) And, of course, where the assault has once assumed a dangerous form, every allowance should be made for one, who, with the instinct of self-preservation strong upon him, pursues his defence a little farther than to a perfectly cool bystander would seem absolutely necessary. The question in such cases will be, not whether there was an actually continuing danger, but whether there was a reasonable apprehension of such danger.

The right of defence against injuries to property is governed by the same principle, viz., the continuance of an injury which may be prevented. (s. 105.) Therefore, resistance, within the justifiable limits, may be continued so long as the wrongful act is going on. But when the robber, for instance, has made his escape, the principle of self-defence would not extend to killing him if met with on a subsequent day. If, however, the property were found in his possession, the right of defence would revive for the purpose of its recovery. It by no means follows, however, that the right would revive to the same extent as it formerly existed at the commission of the original offence. For instance, if a house-breaker is found carrying away property at night he may be killed. But if he is met with next day in possession of the same property it would be unlawful to kill him, as the house-breaking has come to an end. Only such violence is lawful as would be justifiable against a person who has stolen property without intimidation, and if he resists by means which create no apprehension of death or grievous hurt he cannot be killed, by virtue of anything contained in these sections. This is the ground of the distinction drawn in explanations 2 and 3 between theft and robbery. In the former case, the right of defence appears to last longer than it does in the latter. What is meant is, that the right of defence against robbery, *as such*, only lasts as long as the robbery. While the fear of death, hurt, or wrongful restraint, which causes theft to grow into robbery (s. 309), continues, the offender may be killed. But when he takes to his heels with the booty the robbery is over, and the right of defence is reduced to what would have been admissible against a pick-pocket. This seems, as a mere matter of public policy, to be a grave error, and is certainly opposed to English law which would allow a man to fire upon a highwayman while he was galloping away. A similar remark applies to explanation 5. The right of defence against house-breaking as such, only lasts so long as the house-trespass continues, that is, (s. 442) so long as the criminal is within the building. It would appear that if he died of a shot fired at him after he had effected his escape from the house this would be an unlawful killing, though if he did not die, but was maimed for life, it would be all right. (s. 104.)

The right of private defence of property against theft is stated only to continue "till the assistance of the public authorities is obtained." But, of course, the victim of the theft will still be allowed to lend his aid in support of the public authorities should they require.

Death caused by the exercise of the right of private defence of property or person, in good faith, but to an extent not warranted by the law, is not murder, but culpable homicide. (s. 300, Exception 2, 2 R.C.C.R. 40.)

It will be observed that the above sections refer to the right of private defence only, not to another right which frequently arises on the commission of crime, viz., the right to arrest. This rests upon a completely different ground, viz., upon considerations of public policy.

Resistance to a legal arrest will always justify the death of the party resisting, where the authority of the law can be maintained in no other way.

"So that in all cases, whether civil or criminal, where persons having authority to arrest or imprison, and using the proper means for that purpose, are resisted in so doing, they may repel force by force, and need not give back; and if the party making resistance is unavoidably killed in the struggle, this homicide is justifiable." (1 Russ. 893.)

In such cases the party trying to effect the arrest is not required to stand on his defence. He is bound to advance and perform his duty, at all hazard to himself, and, therefore, is entitled to protect himself so far as may be necessary.

"If a person, against whom a warrant of arrest is issued, forcibly resists the endeavour to arrest him, the police officer or other person executing the warrant may use all means necessary to effect the arrest." (Cr. P.C. s. 178.)

"But in judging of the degree of resistance which shall justify the assumption of deadly weapons the rule is, that none is sufficient which does not give the officer reason to believe that his life shall come to be in hazard if he shall persist in the execution of his warrant. The fear of a wrestling bout, or even of a beating or bruising, is not a relevant defence; nor, indeed, anything short of a preparation of a deadly weapon against the officer, or of such an over-powering force as plainly indicates that, but with the peril of his life, he cannot advance and discharge his duty. But, on the other hand, it is equally clear, that if the officer shall hastily, and without any sufficient cause, make use of deadly weapons to enforce his warrant and death shall ensue, this crime will not be construed anything less than murder. (Under the Code it would be only culpable homicide, s. 300, Exception 3.) This will be more especially the case, if there be any appearance of premeditation or malice on the officer's part, or reason to believe that he has made use of his office and his commission to give a colour to, and obtain impunity for, private vengeance." (Alison Crim. L. 29.)

And the same necessary violence, which may be employed by an officer in making an arrest, will be justifiable on the part of jailers, or others, resisting a forcible attempt to escape from their custody. (Arch. 556.)

Precisely the same protection is extended to private persons aiding public officers, or effecting an arrest, of their own accord, under circumstances which justify them in so doing.

"In order to justify an officer or private person in these cases it is necessary that they should, at the time, be in the act of legally executing a duty imposed upon them by law, and, under such circumstances, that if the officer or private person were killed it would have been murder. For if the circumstances of the case were such, that it would have been manslaughter only to kill the officer or private person, it will be manslaughter at least in the officer or private person to kill the party resisting." (Arch. 556.)

Nothing is said in the Cr. P.C. as to the degree of violence which may be used for the purpose of effecting an arrest, where the party, instead of resisting, merely flies to avoid arrest. Under English law,

"If the offence with which the man was charged were a treason or felony, or a dangerous wound given, and he flies, and cannot otherwise be apprehended, the homicide is justifiable (see 4 R.J. & P. 165); but if charged with a breach of the peace, or other misdemeanour only, or if the arrest were intended in a civil suit, the killing in these cases will be murder; unless, indeed, the homicide were occasioned by means not likely or intended to kill, such as tripping up his heels, giving him a blow of an ordinary cudgel, or other weapon not likely to kill, or the like; in which case the homicide, at most, would be manslaughter only." (Arch. 556.)

The Scotch law is even stricter upon this point, and only justifies the killing of a runaway criminal in cases where the charge against him is a capital offence. As Mr. Alison observes, (Crim. L. 37.)

"Certainly, nothing can be found in the consideration of public interest or state necessity, urged on the other side, in such a case, to counterbalance the consideration that the officer has here taken upon himself to kill a person suspected of an offence, for which, if convicted, the law would have inflicted a milder punishment. But this is to be observed, on the other side, that in the case of an atrocious assault bordering on death, or with deadly weapons, and where the future consequences of the wound are uncertain, the officers or their assailants are clothed with nearly the same privilege as if death had actually ensued."

In India, where the ultimate escape of a known criminal is next to impossible, the rule of Scotch law seems to me the safer rule to follow. In Bombay it has recently been held that escape from civil process or arrest is not a criminal offence. (Reg. *v.* Connon, 6 Bomb. C.C. 15.) It follows that only very slight violence would be justifiable in preventing such escape, where the escape is without violence. In the N. W. Provinces where some villagers acting under a plan arranged for them by the police, killed a proclaimed outlaw, who had murdered a constable, the High Court held that the case was culpable homicide under the third exception to s. 300. (5 N.W.P. 130). In that case, however, the prisoners had commenced the attack, and the outlaw appears to have been escaping from their violence, and not from any understood attempt at an arrest.

CHAPTER V.

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Where grievous hurt was caused, and the evidence went to show that the attack was unpremeditated, it was held that certain prisoners, who stood by while the assault was being committed by others, were guilty of "intentional aiding" under the clause, but were not punishable under s. 114. (4 R.C.C.C.R. 27.) But see the note to s. 114, *post* p. 100.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act, which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is, therefore, subject to the punishment of death.

(*c*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and, therefore, does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy,

that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has, therefore, committed the offence defined in this section, and is liable to the punishment for murder.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

The definition of offence under the amending Act XXVII of 1870 (see s. 40, *ante* p. 25) now includes offences against special and local laws. It does not, however, include offences against the law of England. Therefore, where the principal offender is punishable only under that law, as, for instance, for an offence against the common law committed on the High Seas, he is not punishable under s. 109 for the offence of conspiring in India to commit that offence. (7 Bomb. C.C. 116.) When the principal offender is punishable under a special English Statute, such Statute might perhaps be held to be "a special law," and, if so, he would be punishable for abetment of the offence in India. (See 7 Bomb. C.C. 118.) In the case of Elmstone and others who were indicted for having conspired in Bombay to cause the destruction of a vessel on the High Seas, the indictment being before the passing of Act XXI of 1870, it was held that they were not punishable under the Penal Code. Marks the principal offender was convicted under 24 & 25 Vict. c. 97, s. 42. Elmstone was convicted as an accessory before the fact under 9 Geo. IV, c. 74, s. 7, which provides that the offence of the accessory may be inquired of, tried, and determined by any Court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed on the High Seas. (7 Bomb. C.C. 130.)

Except that the mistake has actually been made, (see 5 R.J. & P. 215) I should have thought it unnecessary to point out that a person who has been convicted of an offence, as principal, cannot also be punished for abetting it.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in s. 161.

(*b*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here, B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Punishment of abetment if the person abetted does the act with a different intention from that of the abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor, and with no other.

See definition of offence, s. 40, *ante* p. 25.

Liability of abettor when one act is abetted and a different act is done,

Proviso.

111. When an act is abetted and a different act is done, the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the

influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

(*a*) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

(*b*) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(*c*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

See note to s. 34, *ante* p. 22.

Abettor when liable to cumulative punishment for act abetted and for act done.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

See definition of offence, s. 40, *ante* p. 25.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the fact with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abettor present when offence is committed.

See definition of offence, s. 40, *ante* p. 25.

In order that a person should be liable as an abettor, when absent, it must be shown that he had aided, instigated, or conspired towards the crime actually perpetrated. (s. 107.) Therefore, where grievous hurt was committed by some prisoners, while others merely stood by, and the evidence showed that the attack was unpremeditated, it was held that those who stood by might be punished as abettors, for aiding in the act under s. 107, cl. 3, but could not be punished as principals under s. 114. For if they had been absent, they could not have been punished at all. (4 R.C.C.C.R. 27.) But *quære*, for if the prisoners were really aiding, then the act would have been the act of all under s. 34 (*ante* p. 22), and each would be liable as if he had committed it himself. (See 4 Mad. H.C. Rul. 37.)

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that

Abetment of an offence punish-

able with death or transportation for life, if the offence be not committed in consequence of the abetment.

offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to a fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

If an act which causes harm be done in consequence of the abetment.

See definition of offence, s. 40, *ante* p. 25.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be pun-

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.

ished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for that offence or with both.

See definition of offence, s. 40, *ante* p. 25.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe, A is punishable under the section.

(*b*) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c*) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*) B abets the commission of a robbery by A, a police officer, whose duty is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Abetting the commission of an offence by the public, or by more than ten persons.

117. Whoever abets the commission of an offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

See definition of offence, s. 40, *ante* p. 25.

Illustration.

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at a certain time and place for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

This section does not apply to cases where each of the persons abetted commits a distinct and separate offence; *e.g.*, where the prisoner induced twelve coolies each to break his contract. (5 R.J. & P. 105.)

The English law used to divide criminals into four classes, according to the manner in which they were connected with the act. They were either principals in the first or second degree, or accessories before or after the fact.

A principal in the first degree is defined to be, one who, either actually or constructively, is the immediate perpetrator of the crime. (Arch. 4.)

A principal in the second degree is, one who is present, aiding and abetting, at the commission of the fact. (Ibid.)

An accessory before the fact is he who, being absent at the time of the felony committed, doth yet procure, counsel, command, or abet another to commit a felony. (Arch. 71.)

An accessory after the fact is one, who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon. (Arch. 10.)

The case of principals is dealt with by ss. 34—38 (*ante* pp. 22—24.) Section 34 makes each responsible for the act of all where the criminal act is done by several. Therefore, where several join in a gang robbery carried on with violence, each will be liable under s. 394, though only one actually did hurt. But the act so ascribed to each must be the joint act and not some special offence committed by one of the individuals. If several join in house-breaking, and one commits a rape in the house, this would not be the offence of any but those who actually aided him. And so, where an offence is made up of an act and an intention, those who join in the same act will only be liable if they do it with the same intention. (ss. 35, 38.) But all those who join in any act will be liable for every result, which naturally flows from such an act. As, for instance, if a death, not in itself contemplated, were to result from a joint beating or a joint arson. (s. 39.)

Under the English law, a person who induces an innocent person to commit a crime is considered not an abettor, but a principal in the first degree. (Arch. 4; Reg. *v.* Butcher, 28 L.J.M.C. 14; Bell 6.) Under the Code, however, he is ranged with abettors. (s. 107, Exp. 3.)

There is nothing either in this Chapter or Chapter II which applies to accessories after the fact. All the sections refer to something done prior to or at the time of the commission of the act, not to assistance or concealment rendered after the crime is accomplished. This will be found in ss. 130, 136, 157, 212, 216, under the head Harbouring.

A person is said to instigate another to an act, when he actively suggests and stimulates him to the act, by any means or language direct or indirect, whether it take the form of express solicitation, or of hints, insinuation, or encouragement. (Arch. 8.) But a mere acquiescence or permission does not amount to an instigation.

"As if A says he will kill J. S. and B says you may do your pleasure for me, this makes not B accessory." (1 Hale 616.)

Where the parties indicted as principal and abettor stand in the relation of master and servant, and where the acts of the latter are not in themselves unlawful, the guilt of each party will depend upon the knowledge and intention with which such acts were done. Where the keeper of a place of public resort left his premises in the management of a servant, and prostitutes were suffered to meet together

and remain there, contrary to law, it was ruled, that if the servant, in knowingly suffering the prostitutes to meet together and remain, was carrying out the orders of his master, the master was guilty as a principal and the servant as abetting. (Wilson *v.* Stewart, 32 L.J.M.C. 198.) And so, the loading of his master's gun by a servant might be an innocent or a guilty act, according as he thought his master was going to shoot a tiger or to commit a dacoity.

There seems at first to be some contradiction between clause 2 of s. 107, and ss. 115 & 116. The former seems to imply that some abetments are only offences if something follows upon them; the latter that an abetment is an independent crime, irrespectively of ulterior results. I conceive that the legislature contemplated two sorts of abetment, active and inactive. An active abetment, such as instigation, is in itself punishable, though nothing comes of it. But an inactive abetment, as where a person consents to take part in a conspiracy pressed upon him by others, is only a crime where some overt act is done in consequence.

By English law, it is laid down that, if

> "A commands B to kill C, but before the execution thereof A repents and countermands B, and yet B proceeds in the execution thereof, A is not accessory, for his consent continues not, and he gave timely countermand to B. But if A had repented, yet if B had not been actually countermanded before the fact committed, A has been accessory." (1 Hale 618; 2 Hawk. P.C. 424.)

This doctrine is contrary to the general principle of English law which will not suffer a party who has once committed a crime to purge it by subsequent acts, as, for instance, in the case of theft, even by restitution. (Arch. 282.) No such exception is hinted at in the Code, and I conceive the principle would be too dangerous in its application to render its introduction desirable.

What is meant by the phrase "illegal omission," which is mentioned in s. 107, cl. 3, as one of the ways by which a person may abet an act? By English law a man does not become an accessory by mere non-feasance, as, for instance, withholding assistance which he had it in his power to give; concealment of an intended crime of which he has information. (Arch. 8.) I do not imagine that the framers of the Code intended to alter this rule. It seems to me that the "omission" must be one which has an active effect in bringing about the result; that it must be one of the chain of facts by which the crime is accomplished, and that it will not be sufficient if it is merely an omission to do something which might prevent the crime. For instance, if a servant were intentionally to leave a door unlocked, in order to facilitate the entrance of a burglar; if a nurse were intentionally to refrain from giving a sick man his medicine, in order to hasten his death—these would be illegal omissions by which the crimes were aided. The mere passive assistance afforded by concealment of facts which might be disclosed is rendered punishable by ss. 118, 119 & 176.

The concealment must tend, and be intended, to bring about or facilitate the crime: concealment of an offence after it has taken place is not of itself an abetment, (5 R.J. & P. 106; 4 B.A. Cr. 7) though, coupled with other facts, it might be evidence of an abetment.

These remarks apply with still greater force to s. 107, cl. 3, Exp. 1, where the "wilful concealment" which amounts to abetting must be of a material fact, which the party is bound to disclose, by which something is voluntarily caused or procured. The latter words point clearly to an active, and not merely a passive, part in the result arrived at. For instance, a witness at a trial who voluntarily concealed a material fact in pursuance of a conspiracy to get an innocent man executed, (see ss. 194 & 195) would be an abettor under this section. Accordingly, in England the balance of authority seems to be in favour of the position, that giving false evidence against an innocent man to procure his execution would be murder. (1 Russ. 687, notes *g* and *h*.) In Scotland, however, it is said that such a crime could only be punished as perjury or conspiracy. (Alison Crim. L. 73.) The case is expressly provided for in s. 194.

Three different states of facts may arise after an abetment. First, no offence may be committed. In this case the offender is punishable under ss. 115 & 116 for the mere attempt to cause crime. Secondly, the very act at which the abetment aims may be committed, and will be punishable under ss. 109 & 110. Lastly, some act different, but naturally flowing from the act abetted, may be prepetrated, in which case the instigator will fall under the penalties of ss. 111—113.

Section 113 may lead to dangerous laxity, unless the proper interpretation is put upon the concluding proviso. The law assumes that a man knows and contemplates the natural result of his acts, and will not permit him to escape the consequence of his acts by merely pleading ignorance. Such ignorance can at most amount to recklessness or indifference, which is no excuse. Take, for instance, the illustration in the text. If the grievous hurt instigated by A were the maiming of Z, under the effects of which he died, no Court of Justice could allow A to plead ignorance of this probability as rendering his offence less than murder. (Arch. 537; Alison Crim. L. 3.) As Lord Justice Clerk laid down the law in one case in Scotland; (Alison Crim. L. 4.)

"This was an instance of absolute recklessness and utter indifference about the life of the sufferer; and the law knows no difference between the guilt of such a case, and that of an intention to destroy."

Under Act XVIII of 1862, s. 29, "abettors may be indicted and punished for abetting an offence which has been committed in consequence of the abetment, notwithstanding the person who committed the offence shall not have been indicted or found guilty, or shall not be in custody or amenable to Justice, and every abettor of an offence may be indicted, tried, and punished for the abetment as a substantial offence, and punished by any of Her Majesty's Supreme (now High) Courts of Judicature, which would have power to try the abettor if he had committed the offence himself, either in the place in which he is guilty of the abetment, or in the place in which any act shall have been committed in pursuance of the abetment."

See also Cr. P.C., s. 66.

118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate the commission of an offence

Concealing a design to commit

an offence punishable with death or transportation for life.

punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and, in either case, shall also be liable to fine.

If the offence be committed.

If the offence be not committed.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under the section.

A public servant concealing a design to commit an offence which it is his duty to prevent.

119. Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence, the commission of which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or if the offence be punishable with death or transportation for life, with imprisonment of either description

If the offence be committed.

If the offence be punishable with death, &c.

for a term which may extend to ten years; or, if

If the offence be not committed.

the offence be not committed, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of Police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

Concealing a design to commit an offence punishable with imprisonment.

If the offence be committed.

120. Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not

If not committed.

committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

There seems a good deal of confusion in the conception of these two sections, and, with one exception, it seems difficult to see the difference between the offence aimed at and that of abetting. The facts stated in the illustration to s. 118 clearly amounted to an act by which the doing of the dacoity was intentionally aided, and therefore came expressly under the definition given in s. 107. Should the offence be punished with seven years' imprisonment under s. 118, or with transportation for life under s. 109? The real force of the sections will arise in the cases alluded to (*ante* p. 92) under s. 107, where there is no active aid given, but merely passive concealment.

These will present no difficulty where there is a positive mis-statement, as, for instance, where a villager, knowing that his neighbour had started off on a gang robbery, should give false answers to the Police as to the man's absence from home, the cause of it, the direction he had taken, the fact of his being armed, or the like. But what will be the law, where he simply abstains from giving information which is in his power? This must come under the words "illegal omission." Now, according to English law, the mere omission to give information is only illegal in the case of treason or felony. This was known by the term *misprision*, and is defined by Lord Hale (vol. I, 374) as being "when a person knows of a treason or felony, though no party or consenter to it, and doth not reveal it in convenient time." There was no such offence as misprision of a misdemeanour. This distinction is not, however, maintained in the present Code, which applies to the concealment of all offences, except those which are merely punishable with fine. See also s. 123, *post* p. 113.

It is probable, however, that the word "illegal" is intended to draw the distinction between cases in which an omission of this nature might be lawful, and those in which it might not. It could hardly be contended that a party who hears of an intended robbery is bound to start off to a distance in search of the Police, in the heat of the day, or the darkness of night, or to the neglect of pressing business. Nor is a person bound to hurry off to communicate an intended crime, of which he has been informed, but upon evidence which he sees reason to doubt. No definite rule can be laid down, but it is clear that in all such cases the certainty of the information, the amount of belief reposed in it, the emergency of the occasion, and the facility for communicating the design to those who would be able to avert it, must all be taken into consideration. The circumstances must almost be such as to render the party accused an accomplice in the guilt of the principal offenders.

Accordingly, in a case where several prisoners were convicted of murder, and the fifth prisoner who was the wife of the murdered man was indicted under s. 118, it appearing that she knew of the intention to murder her husband, and designedly refrained from warning him, with the intention that his death should follow, the conviction was supported by the Madras High Court. (Referred trial 30 of 1868.)

The Code is stricter in its penalties upon public servants (s. 119) who conceal any offence which it is their duty to prevent. In this case every omission is illegal, and justly so, because every such omission is a direct breach of the duty which they are paid to perform. It must be observed, however, that this section only applies in reference to offences which it was their "duty as such public servants to prevent." It would be no part of the duty of a revenue officer or judicial subordinate to prevent a riot, nor of a Police Constable to see to the accuracy of the village accounts.

Under s. 89 of the Cr. P.C., it is enacted that "every person aware of the commission of any offence made punishable under ss. 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302—304, 388, 392—399, 402, 435, 436, 449, 450, 456—460 of the Indian Penal Code, shall, in the absence of reasonable excuse, the burthen of proving which shall lie

upon such person, give information of the same to the nearest Police Officer or Magistrate." See also Cr. P.C., s. 90, *post* note to s. 182.

Section 89, it will be observed, refers to crimes actually perpetrated, whereas the sections previously under consideration relate to offences contemplated, but not committed.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, and shall forfeit all his property.

Waging or attempting to wage war, or abetting the waging of war against the Queen.

Illustrations.

(*a*) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(*b*) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

121A. Whoever, within or without British India, conspires to commit any of the offences punishable by section one hundred and twenty-one, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Conspiracy to commit offences punishable by Section 121.

"*Explanation.*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof." (Act XXVII of 1870, s. 4.)

The first word of s. 121 is general,—whoever wages war,—without any distinction as to British subjects, or otherwise. Upon this the Commissioners remark, 2nd Report, 1847, § 13,

"The Statute of treason is not more specific than this chapter of the Code in regard to the persons subject to its provisions. It says simply, 'If a man do levy war against our lord the king in his realm,' as the Code says, 'whoever wages war,' &c. The laws of a particular nation or country cannot be applied to any persons, but such as owe allegiance to the Government of the country; which allegiance is either perpetual, as in the case of a subject by birth or naturalisation, or temporary, as in the case of a foreigner residing in the country. They are applicable of course to all such as then owe allegiance to the Government, whether as subjects or foreigners, except as excepted by reservations or limitations. The specification proposed by Mr. Hamilton would exclude foreigners resident in the country. Now, when foreigners enter the country it is supposed that they do so, only upon this last condition, that they be subject to the laws."

The offence of waging war under s. 121 is the same as that which in the English Statute of Treasons—25 Edw. III, st. 5, c. 2—was styled levying war. No specified number of persons is necessary to constitute the offence; three or four will constitute it as fully as a thousand. (Arch. 628.) Though, of course, the smallness of the numbers would be more important as a matter of evidence, for the purpose of negativing any treasonable design. Nor is it necessary to show that there was any of the usual pageantry of war, such as military weapons, banners, or drums, or any regular consultation before the rising. (Foster 208.) The possession of arms is indeed spoken of as one of the elements in the offence, but this I conceive is also merely a matter of evidence. Numbers sufficiently overwhelming would make arms unnecessary, or ensure their being speedily obtained. Nor is it necessary that any blows should actually be dealt. "Listing and marching are sufficient overt acts, without coming to a battle." (Foster 218.)

The mere fact of an armed assembly meeting and marching, or even fighting, will not, of itself, constitute a waging war. It must be by some public and premeditated plan, for some public and general purpose. The law upon this point cannot be better laid down than in the words of the Statute of Edw. III, which was declaratory of the Common Law upon the point, as explained by Mr. Justice Foster. His commentary deserves especial remark from the circumstance that it was accepted as being the authoritative exposition of the law, by the late Lord Campbell, when Attorney-General and prosecuting for the Crown in a case of High Treason. (Frost's case, 9 C. & P. 141.)

"The true criterion, therefore, in all these cases is, *Quo animo* did the parties assemble? For if the assembly be upon account of some private quarrel, or to take revenge on particular persons, the Statute of Treasons hath already determined that point in favour of the subject." "If," saith the Statute, "any man ride armed openly, or secretly with men of arms against "any other to slay or to rob him, or to take and keep him till he make fine for "his deliverance, it is not the mind of the King nor his Council, that in such "case it shall be judged treason; but it shall be judged felony or trespass "according to the law of the land of old time used, and according as the case "requireth."

"The words of the first clause descriptive of the offence, 'If any man ride armed openly or secretly with men of arms,' did, in the language of those times, mean nothing less than the assembling bodies of men, friends, tenants,

or dependants, armed and arrayed in a warlike manner in order to effect some purpose or other by dint of numbers and superior strength; and yet these assemblies so armed and arrayed, if drawn together for purposes of a private nature, were not deemed treasonable."

"Though the Statute mentioneth only the cases of assembling to kill, rob, or imprison, yet these, put as they are by way of example only, will not exclude others which may be brought within the same rule; for the restrospective clause provideth, that if in such case or other like it hath been adjudged. What are the other like cases? All cases of the like private nature are, I apprehend, within the reason and equity of the act. The case of the Earls of Gloucester and Hereford, and many other cases cited by Hale, some before the Statute of Treasons, and others after it,—those assemblies, though attended many of them with bloodshed and with the ordinary apparatus of war, were not holden to be treasonable assemblies; for they were not, in construction of law, raised against the King or his Royal Majesty, but for purposes of a private personal nature."

"Upon the same principle and within the reason and equity of the Statute, risings to maintain a private claim of right, or to destroy particular enclosures, or to remove nuisances, which affected or were thought to affect in point of interest the parties assembled for these purposes, or to break prisons in order to release particular persons without any other circumstances of aggravation, have not been holden to amount to levying war within the Statute."

"And upon the same principle and within the same equity of the Statute, I think it was very rightly holden by five of the Judges, that a rising of the weavers in and about London to destroy all engine-looms, machines which enable those of the trade who made use of them to undersell those who had them not, did not amount to levying war within the Statute; though great outrages were committed on that occasion, not only in London but in the adjacent countries, and the magistrates and peace officers were resisted and affronted."

"For those Judges considered the whole affair merely as a private quarrel between men of the same trade about the use of a particular engine, which those concerned in the rising thought detrimental to them. Five of the Judges indeed were of a different opinion; but the Attorney-General thought proper to proceed against the defendants as for a riot only."

"But every insurrection which in judgment of law is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of Government, or to remove evil councillors from about him, these risings all amount to levying war within the Statute, whether attended with the pomp and circumstances of open war or not; and every conspiracy to levy war for these purposes, though not treason within the clause of levying war, is yet an overt act within the other clause of compassing the King's death. For these purposes cannot be affected by numbers and open force without manifest danger to his person."

"Insurrections in order to throw down all inclosures, to alter the established law, to change religion, to enhance the price of all labour, or to open all prisons—all risings in order to effect these innovations of a public and general concern by an armed force are, in construction of law, high treason, within the clause of levying war; for though they are not levelled at the person of the King, they are against his Royal Majesty; and, besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property and all Government too, by numbers and an armed force. Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the King, or for the reformation of real or imaginary evils of a public nature and in which the insurgents have no special interest—risings to effect these ends by force and numbers are, by construction of law, within the class of levying war; for they are levelled at the King's Crown and Royal Dignity." (Foster 208—211.)

And, so, the Indian Law Commissioners say, in their 2nd Report, 1847, § 10, referring to, and agreeing with the view of the English Criminal Law Commissioners.

"In another place the Commissioners say, 'the terms of the Statute seem naturally to import a levying of war by one, who, *throwing off the duty of allegiance*, arrays himself in open defiance of his Sovereign in like manner and by the like means as a foreign enemy would do, having gained footing within the realm.' So, also, we conceive the terms 'waging war against the Government' naturally import a person arraying himself in defiance of the Government, in like manner and by like means as a foreign enemy would do."

In a case which is charged as being the offence of waging war, the prisoners are not bound of necessity to show what was the object and meaning of the acts done. The onus rests upon the prosecution, not only to make out the facts, but the motives which constitute the offence. (Reg. *v.* Frost, 9 C. & P. 129.) These will in general be easily ascertained, since the language and acts of those engaged in the same common enterprise will all be admissible for the general purpose of showing the object and character of the assembly. Accordingly, in the case of Reg. *v.* Hunt, (5 B. & A. 566) where Hunt and others were indicted for unlawfully meeting together for the purpose of exciting disaffection, it was held that resolutions proposed at a former meeting at which he had presided, were admissible as showing the intention of those who assembled at the second meeting, both having avowedly the same object. The meeting in question was attended by large bodies of men who came from a distance, marching in regular military order, and it was held to be admissible evidence of the character and intention of the meeting, to show that within two days of the same considerable numbers of men were seen training and drilling before day-break, at a place from which one of these bodies had come to the meeting; and that on their discovering the persons who saw them they ill-treated them, and forced one of them to swear never to be a King's man again. Also, that it was admissible evidence for the same purpose to show, that another body of men in their progress to the meeting, in passing the house of the person who had been so ill-treated, exhibited their disapprobation of his conduct by hissing. And inscriptions, and devices on banners and flags, displayed at a meeting were held to be admissible evidence for the same purpose. See, also, the Indian Evidence Act, 1872, s. 10.

According to the English law of evidence,

"There must be two witnesses to prove the treason, both of them to the same overt act, or one of them to one, and the other of them to another overt act, *of the same treason*; unless the defendant shall willingly, without violence, confess the same. And if the jury do not give credit to both witnesses, the defendant shall be acquitted. But one witness is sufficient to prove a collateral fact; as, that the defendant is a natural born subject, or the like." (Arch. 627.)

But under the Indian Evidence Act, 1872, s. 134,

"No particular number of witnesses shall in any case be required for the proof of any fact."

I presume that this section is intended to do away with the rule of English law as to the minimum evidence required on charges of high treason and perjury. If so, however, the language is not very accurate. An English jury in either of the above cases is not told to disbelieve the fact spoken to by only one witness, but is informed that something more than such proof of the fact is required before they can be allowed to convict of the crime.

The evidence of an accomplice does not require corroboration, as a matter of law, (Indian Ev. Act, 1872, s. 133) though it is desirable as a matter of precaution. (1 R.C.C.C.R. 78; 4 Mad. H.C. Rul. 7; 3 Bomb. C.C. 57; 3 B.A.Cr. 66; 6 Bomb. C.C. 57.) The confession of a co-prisoner is neither in itself sufficient to sustain a conviction, nor can it be accepted as corroborative of the evidence of an accomplice, where such corroboration is deemed necessary. (1 Mad. L.R. 163; 1 Bomb. L.R. 475.)

Collecting arms, &c., with the intention of waging war against the Queen.

122. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war, with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

Concealing with intent to facilitate a design to wage war.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

124. Whoever with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults, or wrongfully restrains, or attempts wrongfully to restrain, or overawes by means of criminal force or the show of criminal force, or attempts so to over-

awe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

124A. Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Exciting disaffection.

Explanation.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause. (Act XXVII of 1870, s. 5. See ss. 13 & 14, post p. 116.)

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added; or with imprisonment of either description for a term which may extend to seven years, to which fine may be added; or with fine.

Waging war against any Asiatic power in alliance with the Queen.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

Committing depredation on the territories of any power at peace with the Queen.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in Sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Receiving property taken by war or depredation mentioned in Sections 125 and 126.

128. Whoever, being a public servant, and having the custody of any State Prisoner or Prisoner of War, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant voluntarily allowing Prisoner of State or War in his custody to escape.

129. Whoever, being a public servant, and having the custody of any State Prisoner or Prisoner of War, negligently suffers such prisoner to escape from any place of confinement, in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Public servant negligently suffering Prisoner of State or War in his custody to escape.

According to English law it would seem that the mere fact of an escape is *primâ facie* evidence of negligence on the part of the keeper. For it is his duty to keep the prisoner safely. (Arch. 690.) But this may be negatived on the part of the defendant by showing force, or other circumstances which rebut the presumption. No presumption, however, can be raised from the mere fact of an escape that it was voluntarily permitted, or that it was knowingly aided or assisted, and express evidence must be brought to this effect if any conviction under s. 128 or 130 is desired.

130. Whoever knowingly aids or assists any State Prisoner or Prisoner of War in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner, who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Aiding escape or, rescuing of harbouring such prisoner.

Explanation.—A State Prisoner or Prisoner of War who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

Charges under this chapter except s. 127 are not to be entertained by any Court, unless ordered or authorized by Government or by some Officer empowered by the Governor-General in Council to order or authorize such prosecution, or unless instituted by the Advocate-General. (Cr. P.C., s. 465; Act X of 1875, s. 131.)

The following chapters of the same Code, namely, IV *(General Exceptions)*, V *(Of Abetment)*, and XXIII *(Of Attempts to commit Offences)* shall apply to offences punishable under the said ss. 121A, 294A & 304A, and the said Chapters IV and V shall apply to offences punishable under the said ss. 124A & 225A. (Act XXVII of 1870, s. 13.)

No charge of an offence punishable under s. 121A or 124A shall be entertained by any Court unless the prosecution be entertained by order of, or under authority from, the local Government. (Act XXVII of 1870, s. 14.)

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

Abetting mutiny or attempting to seduce a sailor or soldier from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—In this section, the words 'officer' and 'soldier' include any person subject to the Articles of War for the better Government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869. (Act XXVII of 1870, s. 6.)

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the Army or Navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of an assault by a soldier or sailor on his superior officer, when in the execution of his office.

133. Whoever abets an assault by an officer, soldier, or sailor in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of such assault, if the assault is committed.

134. Whoever abets an assault by an officer, soldier, or sailor in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of the desertion of a soldier or sailor.

135. Whoever abets the desertion of any officer, soldier, or sailor in the Army or Navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring a deserter.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, or sailor, in the Army or Navy of the Queen, has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

Deserter concealed on board merchant vessel through negligence of master.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred Rupees, if he might have known of such concealment, but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Abetment of act of insubordination by a soldier or sailor.

139. No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this Chapter.

Persons subject to Articles of War not punishable under this Code.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

Wearing the dress of a soldier.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly, is—

Unlawful assembly.

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Govern-

ment of India, or the Government of any Presidency, or any Lieutenant-Governor, or any Public Servant in the exercise of the lawful power of such Public Servant; or,

Second.—To resist the execution of any law, or of any legal process; or,

Third.—To commit any mischief or criminal trespass, or other offence *(see s. 40, ante p. 25)*; or,

Fourth.—By means of criminal force, or show of criminal force to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or,

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Being a member of an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Punishment.

143. Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Resistance by a number of persons to an attempt to search a house, which was being made by an officer who had not the written authority for that purpose prescribed by Act X of 1872, s. 379 is not punishable under this section. (7 N.W.P. 209.)

144. Whoever being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining an unlawful assembly armed with any deadly weapon.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.

"A Magistrate or officer in charge of a Police Station may command any unlawful assembly, or any assembly of five or more persons, likely to cause a disturbance of the public peace, to disperse, and it shall thereupon be the duty of the members of such unlawful assembly to disperse accordingly." (Cr. P.C., s. 480.) On failure to do so, the Magistrate is authorised to use military force to compel them to disperse. (Cr. P.C., ss. 481 & 482.)

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Force used by one member in prosecution of common object.

147. Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall

Rioting, armed with a deadly weapon.

be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The offence of rioting, committed by persons armed with deadly weapons, under s. 148, is a different offence from that of stabbing a person on whose premises the rioting takes place, and the latter offence may be punished separately under s. 324. (3 R.C.C.C.R. 34.)

Every member of an unlawful assembly to be deemed guilty of any offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

A number of persons went together to eject a man from a piece of land, the title of which was in dispute. Upon a vigorous resistance being made, one of the party, who was armed with a gun, fired at and killed the resisting person. It was held that he was guilty of murder, but that the other members of the unlawful assembly were not guilty of murder under s. 149, the act of killing being sudden and unpremeditated, and therefore not being either the common object of the assembly, or an act which the other members of the assembly must have known "to be likely to be committed in the prosecution of that object." (11 B.L.R. 347.)

It is evident that the question in this case was purely one of fact. Where a number of persons go out to commit a violent act, armed with weapons of a deadly nature, and determined to overcome resistance by force, it would be quite open to the Court or to a Jury to come to the conclusion that they knew it was likely that those weapons would be used with a deadly result. If so, when the result happened, each member of the party would be guilty of murder. In the particular instance, from all the facts of the case, the majority of the Judges arrived at an opposite conclusion. But the decision cannot be taken as binding other Judges to decide even a similar case in the same way. See also *post* p. 126.

Hiring or conniving at hiring of

150. Whoever hires or engages or employs, or promotes or connives at the hiring, engagement, or employment of any

persons to join an unlawful assembly.

person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

See Cr. P.C., s. 480, *ante* p. 121.

Explanation.—If the assembly is an unlawful assembly within the meaning of Section 141, the offender will be punishable under Section 145.

Assaulting or obstructing public servant when suppressing riot, &c.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Wantonly giving provocation, with intent to cause riot.

153. Whoever malignantly or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such

If rioting be committed.

provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

If not committed.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand Rupees, if he or his agent or manager knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest Police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Owner or occupier of land of which an unlawful assembly is held.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the

Liability of person for whose benefit a riot is committed.

riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Liability of agent of owner or occupier for whose benefit a riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in Section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both; and whoever being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon, or with any thing which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Being hired to take part in an unlawful assembly or riot.

Or to go armed.

159. When two or more persons, by fighting, in a public place, disturb the public peace, they are said to "commit an affray."

Affray.

160. Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred Rupees, or with both.

Punishment for committing affray.

Unlawful assemblies, as defined in s. 141, may either aim at the accomplishment of public or of private ends. Where the object in view is of a public character, the difference between such an assembly and a waging of war under s. 121 may be a very narrow one. Whatever amounts to a threat of force, to be employed at some indefinite future period, will, as I understand the section, be an unlawful assembly. But if the object is to carry out the design of the assembly by an immediate exercise of force, this would amount to a waging of war. Suppose, for instance, that during the progress of some obnoxious scheme of taxation through the Legislative Council, crowds were to assemble every day to hoot the members supposed to be in favour of it, or monster processions were to parade the streets as an exhibition of the numbers of those opposed to the plan, this would constitute an unlawful assembly. But if the processions were to force their way into the Council itself, for the purpose of then and there compelling the abandonment of the measure, this would be an actual waging of

war. And so it was laid down by Lord Mansfield in the case of the Gordon riots, where he stated to the jury,

"That it was the unanimous opinion of the Court, that an attempt, by intimidation and violence, to force the repeal of a law, was a levying war against the king, and high treason." (Reg. *v.* Gordon, Doug. 592.)

It must not, however, be supposed that mere numbers will make an assembly unlawful where the object is to procure some public result. The question will always be, what are the means by which it is proposed that the object should be brought about? Public meetings for the purpose of eliciting, declaring, or altering public opinion upon any State matter are perfectly lawful. Where such meetings are for the purpose of petitioning, they have the additional sanction of the Bill of Rights (1 Wm. & M st. 2, c. 2), in which it is expressly laid down,

"That it is the right of the subjects to petition the king, and that all commitments and prosecutions for such petitioning are illegal."

But where such meetings, under the cloak of public discussion or petitioning, are really used and intended as exhibitions of physical force, for the purpose of overawing and intimidating those whose conduct they canvass, they will be illegal. The series of monster meetings which were convened by O'Connell throughout Ireland in 1844 for the purpose of carrying the repeal of the Union may serve as an instance.

A very common instance of unlawful assembly is that of tumultuous meetings, which from the private character of their objects cannot rise to a waging war. For instance, a caste procession, marching in an insulting and defiant manner through streets inhabited by another caste, so as to provoke angry passions, or excite to a breach of the peace. And so, in times of scarcity, assemblies held to discuss the conduct of the merchants in demanding high prices, or of the Government in refusing remissions of revenue, might become unlawful, not from the mere opinions expressed, but from their tendency to end in violence. Accordingly, it has been ruled that,

"Any meeting, assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood, is an unlawful assembly: and in viewing this question, the jury should take into their consideration the way in which the meetings were held, the hour at which they met, and the language used by the persons assembled, and by those who addressed them; and then consider whether firm and rational men, having their families and property there, would have reasonable ground to fear a breach of the peace, as the alarm must not merely be such as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage." (2 Russ. 388.)

"All persons who join an assembly of this kind, disregarding its probable effect, and the alarm and consternation which are likely to ensue, and all who give countenance and support to it, are criminal parties." (Ibid.)

Clause 4, s. 141, applies equally whether the possession is sought for under colour of title or without it, and whether the right which is asserted is a valid or invalid one. The object of the clause is the same as that of the old English Statute 5 Ric. II, st. 1, c. 7, against

forcible entries, and is to prevent breaches of the peace, by compelling every one who asserts rights, which may be contested, to do so under the authority of law.

Upon this Statute it has been held, that in order to make an entry forcible,

"It seems clear that it ought to be accompanied with some circumstances of actual violence or terror: and, therefore, that an entry which had no other force than such as is implied by the law in every trespass whatsoever, is not within the Statute." (1 Hawk. 500.)

I conceive that the same principle is expressly pointed to throughout s. 141 by the epithet "criminal" qualifying force. It must be force used, or intended to be used, for the purpose of overcoming resistance, by causing fear, injury, or annoyance. (s. 350.) Accordingly, Mr. Serjeant Hawkins says, (1 Hawk. 501.)

"It is to be observed, that wherever a man, either by his behaviour or speech, at the time of his entry, gives those who are in possession of the tenements which he claims just cause to fear that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible, whether he cause such a terror by carrying with him an unusual number of servants, or by avowing himself in such a manner as plainly indicates a design to back his pretensions by force, or by actually threatening to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force against those who shall make any resistance."

Where the defendants, Ryots of a portion of a Zemindary sold in execution of a decree of a Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the ryots were assembled in such numbers and so armed that nothing could be done against them, it was held by the Madras High Court that the acts of the defendants did not amount to an offence under s. 141 of the Penal Code. The Judges said,

"The High Court are of opinion that the acts of the defendants did not fall within either clause 3, 4, or 5 of s. 141. The common purpose was not to commit any offence, such as, for instance, under s. 424 of the Penal Code, for apparently there was a *bonâ fide* claim of right, and the out-turn of the crop having been openly ascertained, the purchaser can be put to no loss or difficulty in recovering the amount that may be due to him upon the share of the crop to which he may hereafter be found entitled under his purchase. So that there is no ground for saying that the crop was carried away with any intent to defraud. Further, the defendants were in possession of the crops and grain which were the property of them or of some of them, and if any one was seeking to enforce a right or a supposed right, it was the purchaser and his agents, and what the defendants did was, by show of force, to protect their own possession and prevent the purchaser from enforcing his supposed right." (4 Mad. H.C. Rul. 65.)

Assuming, however, that the purchaser had the right which he was prevented from enforcing, it seems pretty clear that the defendants were, by means of criminal force, compelling him to omit to do what he was legally entitled to do, and that their conduct came under cl. 5 of s. 141. Their conduct also was a forcible assertion of their supposed right to carry away their crops, and, therefore, came under cl. 4. Accordingly, in a later case, some defendants had been

convicted of rioting under s. 147 for stopping a procession. On appeal the Assistant Magistrate, though crediting the fact of the defendants having interrupted the procession, reversed the conviction on the ground that the defendants had a right to stop the procession as it was a nuisance. The High Court were "clearly of opinion that the order of the Assistant Magistrate was wrong in law; the act of the defendants, in assembling and forcibly preventing a procession on the ground that they had a right to do so because it was a nuisance or annoyance to them or to their community, was an act clearly falling within cl. 4 of s. 141 of the Penal Code. (5 Mad. H.C. Rul. 6; 7 Ibid. 35.)

The force or violence which is necessary to render the members of an unlawful assembly guilty of rioting must be some act done "in prosecution of the common object of such assembly." (s. 146.) For instance, a gathering of riots to prevent a revenue officer from distraining would be an unlawful assembly under s. 141, cl. 5, and if any one of them were to beat the officer, or rescue the goods seized, this would be a riot, for which every one of the resisting party would be liable, even though he took no part in such act. And, justly so, for the countenance and assistance of those who committed no violence rendered possible the conduct of those who actually committed it. But if a fight were to spring up between two of the persons unlawfully assembled, this would only make them individually responsible, and not convert the assembly into a riot. (5 N.W.P. 208.)

Not only the object primarily intended, but everything which naturally or necessarily follows from the prosecution of that object, will be considered to have been contemplated by those who take part in it, and they will be held responsible for it. (s. 149.) And so according to English law,

"If several persons combined for an unlawful purpose, or for a purpose to be carried into effect by unlawful means—particularly if it be carried into effect notwithstanding any opposition that may be offered against it—and one of them, in the prosecution of it, kill a man, it is murder in all who are present, whether they actually aid or abet or not, provided the death were caused by the act of some one of the party in the course of his endeavours to effect the common object of the assembly. But the act must be the result of the confederacy; for if several are out for the purpose of committing a felony, and upon alarm and pursuit run different ways, and one of them kill a pursuer to avoid being taken, the others are not to be considered as principals in that offence." (Arch. 120) and see *ante* note to s. 34, p. 22.

Accordingly, when it appeared that a number of persons united together for the abduction of a woman, that they came around, and that one of their number struck down and killed a woman who resisted the abduction, the blow being inflicted with a weapon similar to that with which they were all armed, it was held that all those who were members of the unlawful assembly at the time were guilty of the killing. (4 B.L.R. Appx. 47.)

A large body of men, belonging to one faction, waylaid another body of men belonging to another faction, and a fight ensued, in the course of which a member of the first-named faction was wounded, and retired to the side of the road, taking no further active part in

the affray. After his retirement a member of the second faction was killed. It was held by Norman, J., whose opinion as that of Senior Judge prevailed against the dissent of E. Jackson, J., that the wounded man had ceased to be a member of the unlawful assembly and could not be convicted of the murder under s. 149. The Court said that he probably had no longer the same common object as the members of the unlawful assembly from which he separated himself. It did not appear that he contiuued to urge on the others. He was apparently solely occupied by his own sufferings. It was plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others, as he might have had, if he had continued with them. (3 B.A. Cr. 1.)

The essence of an affray (s. 159) consists in the publicity of the place and the disturbance of the public peace; and, therefore, a quarrel among several persons in a private room, where there is no one to be injured but themselves, will only amount to an assault and battery by each. (1 Russ. 406.)

"It is no ground for a total remission of sentence that a party engaged in an affray was not the aggressing party; though the Court in awarding punishment may admit the circumstances to operate in mitigation of puuishment." (1 M. Dig. 124, § 63; 3 Ibid. 105, § 4.)

Just as the opposite state of facts will go in aggravation. (3 M. Dig. 105, § 3.)

I understand the above dictum only to apply to cases where the party assailed was not forced into the affray in actual self-defence. There are many cases of insult, and even slight personal violence, which would not compel a forcible resistance, and if, in such a case, retaliation brought on an affray, both would be culpable, though not in equal degrees. But where the affray arose out of a boundary dispute between the villages of K. and A., in which several persons were killed and wounded, the F. U. held that, as the villagers of A. had, in the first instance, endeavoured to settle the dispute by treaty, and had *throughout the affray* acted on the defensive, they were entitled to an acquittal. (3 M. Dig. 117, § 89.) See 3 R.C.C.C.R. 21, *ante* p. 88.

There is one case in which a party can never justify an affray into which he has been led, and that is, where it has arisen in resistance to a professedly legal process. Accordingly, parties have been sentenced where they had resisted a distress, which in one case was lawful, but irregularly levied, and in another was fraudulent from the very first. Because the party always has his remedy in a Court of Justice, and respect for the law requires that that which claims to be done under its authority should be set aside only by legal means, and submitted to till it is set aside. (1 M. Dig. 128, § 62; 3 Ibid. 105, § 2.)

And so it is expressly enacted by s. 99, that the right of private defence does not exist in such cases. (See *post*, note to s. 300, Exception 1.)

After conviction of any person charged with rioting, assault, or other breach of the peace, or with abetting the same, or with assembling armed men, or taking other unlawful measures with the evident inten-

tion of committing the same, the Court, by which he is convicted or finally sentenced, may order him to enter into recognizances to keep the peace, for a period not exceeding one year if the sentence is passed by a Magistrate, and three years if by a Session Court. (Cr. P.C., s. 489; Act X of 1875, s. 140.) And in default of finding security, where such is required in addition to the party's own recognizance, then the offender may be kept in custody for the same period. (Ibid., s. 490; Act X of 1875, s. 141.) Where, however, a Magistrate thinks it necessary to bind a person beyond the term of one year, he may, before the expiration of the year, refer the case to the Sessions Court, which may authorise him to bind over, or, in default of security, to imprison the party for a further period of one year. (Ibid., s. 499.)

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

Public servant taking a gratification other than legal remuneration, in respect of an official act.

161. Whoever being, or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions, favor or disfavor to any person, or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that

he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a*) A, a Moonsiff, obtains from Z, a banker, a situation in Z's Bank for A's brother, as a reward to A for deciding a case in favor of Z. A has committed the offence defined in this section.

(*b*) A, holding the office of Resident at the Court of a subsidiary power, accepts a lakh of Rupees from the Minister of that power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favor in the exercise of his official functions to that power. A has committed the offence defined in this section.

(*c*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

The offence constituted by this section consists simply in the act of receiving a bribe, or that which is intended as a bribe, although nothing illegal is done, or nothing is illegally omitted in consequence. The receipt of a present from the friends of a prisoner, who was sentenced to be hung the next hour, would still be criminal, if taken as a motive or reward for doing or forbearing to do any official act, for which a reward cannot lawfully be taken. Of course it must be taken with this view. It will not be necessary that the person who receives the present should intend to carry out the purpose for which it is

given. If it is given with corrupt intention, and he receives and appropriates it, knowing of that intention, the offence is complete. Indeed, the presumption of guilty knowledge would be so great that it is hardly possible to conceive a case in which a public official could innocently take any present from a person who was mixed up in any public business connected with his department. Under s. 165 the mere fact of accepting presents amounts to an offence, independently of the motive of either giver or receiver.

To guard against the vexatious prosecutions which might arise out of this and similar clauses, it is provided by the Cr. P.C., s. 466 and Act X of 1875, s. 132, that

"A charge of an offence committed by a public servant in his capacity as such public servant, of which any Judge, or any public servant not removeable from his office without the sanction of Government, is accused as such Judge or other public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve. No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of Government. The sanction must be given before the commencement of the proceedings."

The words "not removeable from office without the sanction of Government" only apply to the preceding words "any public servant." Therefore, a District Moonsiff cannot be prosecuted on any complaint made against him as a Judge without sanction under this section. (6 Mad. H.C. Rul. 22.)

"The above section by implication vests in the Court or authority to whom the Judge or public servant not removeable, &c., is subordinate, the power of sanctioning or directing such prosecution. It does not say that the Government must give the power, but that it shall exist unless limited or reserved. Every Court or authority, therefore, has it unless there is a limitation." (See 7 Bomb. C.C. 64, accord.) "There is no provision that the sanction must be in writing. It is, no doubt, very desirable that such sanction or direction should be put in writing and attached to the record, but it is by no means legally imperative." (Per Holloway, J., 7 Mad. H.C. 58; Ibid. 182.)

In the same case, where no formal sanction had been given, but where the case was investigated and committed for trial by the Head Assistant Magistrate, who was competent to sanction the proceedings, it was said by the same learned Judge, (7 Mad. H.C. 59.)

"If the question had arisen, and it had appeared, as the fact is, that the prosecution was conducted before the very authority to whom the sub-magistrate was immediately subordinate, we should probably have had no difficulty in determining that there were both sanction and direction. If there had not been sanction, it does not follow that the objection could have availed the prisoner after trial and decision. The objection is not one going to the root of the Court's jurisdiction, but something (like notice of action in certain civil cases) needed to justify a Court in going on, and preventing it from going on if the objection is taken. There are objections which prevail *ipso jure* others *ope exceptionis*. Moreover, there are many objections which can be of avail only if taken in due time. In a celebrated case (Reg. *v.* Frost, 9 C. & P. 129—187) the distinction came out very prominently."

This opinion was pronounced upon the corresponding Section (167) of the old Criminal Procedure Act, which did not contain the words

now inserted in s. 466, that "the sanction must be given before the commencement of the proceedings." These words seem to negative the legality of an implied and still more of a retrospective sanction. They require as a condition precedent to trial, the express consideration and determination of the question, whether, assuming the defendant to have committed an offence, it is still advisable that he should be indicted for it. It is obvious that many cases might arise in which this question should be answered in the negative. If so, in the case of certain acts committed by public servants, two elements would be necessary to create liability to punishment; first, the committal of a technical offence; secondly, the opinion of his superior that the offence was one for which it was politic that he should be tried. The absence of either of these elements would seem to be an objection after trial as much as before. With regard, too, to the latter part of the *dictum*, which was not necessary for the determination of the case, the learned Judge appears not to have been aware that the High Court of Bombay had, upon the same Section (167), expressly decided that a conviction which took place after sanction, but which was founded upon evidence taken before sanction, was bad; on the ground that the Court had no jurisdiction to cause the attendance of the accused, or to take any evidence against him until sanction was obtained. (7 Bomb. H.C.C.C. 61.)

"The Local Government may limit the person by whom and the manner in which the prosecution is to be conducted, and may specify the Court before which the trial is to be held." (Cr. P.C., s. 466.)

Where the Local Government limits its sanction by directions as to the person by whom, and the manner in which a charge is to be preferred, these directions must be strictly carried out, and the Court cannot entertain charges preferred by any other person, or in any other manner. (8 Bomb. C.C. 32.)

Taking a gratification, in order, by corrupt or illegal means, to influence a public servant.

162. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render, or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description

for a term which may extend to three years, or with fine, or with both.

Taking a gratification for the exercise of personal influence with a public servant.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a cause before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of the offences above defined.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. A is punishable with imprisonment for a term not exceed-

ing one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted, or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty Rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred Rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b*) A, a Judge, buys of Z, who has a cause pending in A's Court, Government Promissory Notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

By Stat. 13 Geo. III, c. 63, ss. 23—25 & 33 Geo. III, c. 52, s. 62, the receiving of gifts by the Governor-General, or any member of the Council of Fort William, or of any of the Judges of the Supreme Court of Calcutta, or by any person holding any office under the Crown, or the East India Company is forbidden, and is punishable as extortion, and as a misdemeanour at law. But this is not to prevent lawyers, physicians, or chaplains from accepting professional fees and rewards.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant disobeying a direction of the law, with intent to cause injury to any person.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favor by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant framing an incorrect document with intent to cause injury.

Sections 162 & 163 only apply to cases where the party who is to exercise corrupt or undue influence does so for a consideration, obtained from a third person. If he does so without receiving any gratification, to serve his own private interests or for the benefit of another, whether voluntarily or upon solicitation, no offence will have been committed under these sections. If guilty at all, he can only be guilty as an abettor. It will follow, therefore, that if the act done is not an offence in the public servant, it is no offence in the person who instigates him to it. Hence, a person who of his own accord, or, without being himself bribed, offers any gratification whatever to a public servant will be punishable as an abettor of the offence in s. 161. So, if being in any way connected with the official functions of a public servant, he induces him to accept anything for an inadequate consideration, he will have abetted the offence in s. 165. But it is no offence in a public servant to yield to mere personal influence, not accompanied by what is styled in s. 161 a gratification, unless by so doing he transgresses s. 166, or 217.

Hence, if the friend of a party to a civil suit were by personal influence to induce a Moonsiff to give judgment against the defendant contrary to his own conviction, the Moonsiff would be guilty under s. 166, and the party who persuaded him would be guilty as an abettor. So, if the successful solicitations were addressed to a Sessions Judge, who acquitted a prisoner in consequence, the Judge will be guilty under s. 217, and the person who exercised influence as an abettor. But the exercise of or yielding to personal influence in the disposal of patronage, the conferring of rewards for service, the granting of contracts or the like, would be no offence in either of the parties concerned. If, however, the relative were to resort to threats instead of entreaties, this would be an offence under s. 189.

The personal influence referred to in s. 162 seems to mean that influence which one man possesses over another, irrespectively of the merits of the case upon which it is brought to bear. Such considerations as rank, wealth, power, gratitude, relationship, or affection may induce a person to grant to the request of one man what he would not to the request of another. But influence exercised solely upon th merits of the case would seem not to be personal influence. If a pe son who was about to pay a visit to a Collector were to accept a s of money, on the understanding that he was to draw the Collec into conversation upon the case, and represent it fully to him, suc proceeding, however indelicate and improper, would, I conceive, n come under s. 163, provided no personal feeling was brought into play.

Under s. 167 it would be no offence if a Court Translator employed in a criminal case were to mistranslate all the documents for the purpose of procuring the acquittal of the prisoner, though it would be otherwise if he had the contrary motive. Such a case would probably come under s. 218, though the omission of the express words used in s. 167 might make the point doubtful, and it is expressly stated as coming under the head of False Evidence. (s. 191, illustration *e.*) Where the mistranslation is done intentionally, and does produce injury, it will not be necessary to show intention to injure, or knowledge that injury would follow. As Lord Mansfield says,

> "Where an act, in itself indifferent, if done with a particular intent becomes criminal, then the intent must be proved and found: but when the act is of itself unlawful, that is *primâ facie* and unexplained, the proof of justification or excuse lies on the defendant, and in failure therefore the law implies a criminal intent." (5 Burr. 2667.)

Public servant unlawfully engaging in trade.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

By 33 Geo. III, c. 52, s. 137, it is rendered unlawful for any Governor-General, or Governor, or any Member of Council of any of the Presidencies of India, or for any Collector, Supervisor, or other per-

son employed or concerned in the collection of the Revenues, or the administration of justice in the provinces of Bengal, Behar, or Orissa, or for their agents or servants, or any one in trust for them ; or for any of the Judges of the Supreme Court of Judicature to be concerned in any trade or traffic whatever, whether within or without India. (See also 3 & 4 Wm. IV, c. 85, s. 76.) Under Reg. I of 1803, s. 40, Members of the Board of Revenue are forbidden to be concerned in trade, commerce, or houses of agency, or in direction or management of Banks, or in transactions for borrowing or lending money with Native Officers under the Revenue department, or with Zemindars, proprietors of land, renters or other persons responsible for the revenue. Under Reg. II of 1803, s. 64, Collectors and Assistants to Collectors are forbidden to exercise or carry on trade or commerce, directly or indirectly, or to be engaged in any Bank or House of Agency. Nor may they be concerned in the farming of the public revenue, or in the lending of money to proprietors of land, renters, or persons responsible for the public revenue, or in any way connected with its management. (Ibid. ss. 60 & 61.) So, by the oath prescribed for a Judge, (Reg. II of 1802, s. 13 ; Reg. VII of 1827, s. 4) he binds himself not to be concerned directly or indirectly in any commercial transactions. By 37 Geo. III, c. 142, s. 28, the lending of money or any valuable thing by a British Subject to a Native Prince is made a misdemeanour. Here, British Subject is used in its restricted sense. (See Book II. Want of Jurisdiction.)

Act XV of 1848 forbids officers of the Supreme Courts in India, or of the Courts for the Relief of Insolvent Debtors, to carry on any dealings as banker, trader, agent, factor, or broker, either for their own advantage, or for the advantage of any other person, except such dealings as it may be part of their duty to carry on.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase, or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both ; and the property, if purchased, shall be confiscated.

Public servant unlawfully buying or bidding for property.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under color of such

Personating a public servant.

office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Whoever not belonging to a certain class of public servants wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred Rupees, or wi both.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Absconding to avoid service or summons or other proceeding from a public servant.

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice, or order shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

It has been held in Bengal that a person absconding to avoid a warrant issued by a Magistrate against him is not punishable under s. 172. (Acc. Mad. H.C. Rul. 21st April, 1866; 7 N.W.P. 302.) The warrant is neither a summons nor a notice, and the order which it contains is addressed to the officer and not to the person whose attendance is required. The course is to proceed under ss. 183 and 184 of the Crim. P.C. Disobedience to the proclamation issued under Cr. P.C., s. 183 would be punishable under s. 147 of the Penal Code. (1 R.C.C.C.R. 61.)

"A complaint of any offence described in Chapter X of the Indian Penal Code, not falling within s. 435 or 436 of this Act, (*that is, not being punishable under* s. 175, 178, 179, 180 or 228 *of the P. C.*) shall not be entertained in any Criminal Court except with the sanction or on the complaint of the public servant concerned, or of his official superior. The prohibition contained in this section shall not apply to the offences described in ss. 188 & 190 of the Indian Penal Code." (Cr. P.C., s. 467; Act X of 1875, s. 133.)

"The sanction referred to in ss. 467, 468 & 469 may be expressed in general terms and need not name the accused person," (over-ruling apparently the decision in 5 Bomb. H.C.Cr. 38,) "such sanction may be given at any time, (*cf.* s. 466) and a sanction under any one of the three last preceding sections ...ll be deemed sufficient authority for the Court to amend the charge to one ...an offence coming within either of the two remaining sections if the facts ...lose such offence. In cases under this chapter, the report, or application ...he public servant or Court, shall be deemed sufficient complaint." (Cr. ...., s. 470; Act X of 1875, s. 134. See also s. 16.)

"When any such offence as is described in Chap. X of the Indian Penal Code, except ss. 175, 178, 179, 180 & 228, is committed in contempt of the lawful authority of any Civil, Criminal, or Revenue Court by a European British Subject, such offence shall be cognizable only by a Magistrate of the 1st class who is a Justice of the Peace and a European British Subject; and such Magistrate may deal with the offender on conviction in the same manner as is provided in that behalf in s. 74. If such Magistrate considers the offence to require a more severe punishment than he is competent to award under the said section, he may commit the offender to the Sessions Court." (Cr. P.C., s. 438.)

"Except as provided in ss. 435, 436, & 472 (of the Cr. P.C.) no Court shall try any person for an offence committed in contempt of its own authority." (Cr. P.C., s. 473.) See *post* note to s. 193.

In similar cases within the jurisdiction of the High Court, the Court may, after making such preliminary enquiry as may be necessary, either commit the case itself, or send it for enquiry to try or commit for the offence charged. (Act X of 1875, s. 135.)

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons,

notice, or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

The refusal to sign a summons does not constitute the offence intentionally preventing the service of a summons upon him under the above section. (5 Bomb. H.C. Cr. 34.)

Non-attendance in obedience to an order from a public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Illustrations.

(*a*) A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpœna issuing from that Court, inten-

tionally omits to appear. A has committed the offence defined in this section.

(*b*) A, being legally bound to appear before a Zillah Judge as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this section.

A person failing to attend a criminal trial as a juror is punishable under this section. (Cr. P.C., s. 524, and see s. 414.)

Under the three preceding sections the offence depends upon the legal competence of the officer to issue the summons, &c. (5 Bomb. H.C. Cr. 33.) Therefore the High Court of Madras has held, that disobedience to a summons issued by a tahsildar in his revenue capacity, or by a village magistrate in respect to an offence over which he had no jurisdiction, was not punishable. (Rulings of 1864 & 1865, on s. 174.) Now, however, revenue officers in the Madras Presidency have received power to issue such summonses. (Act III of 1869, Madras. See 7 Mad. H.C. Rul. 10, 11.) But Magistrates who have jurisdiction over the offence may issue summonses to witnesses beyond their own local limits. (3 Mad. H.C. Rul. 5.) Under s. 174 it is further necessary that the party should be legally bound to obey the summons. This obligation would, in general, follow as a necessary consequence from the competence of the officer to issue the order. But cases might arise in which there would be no such obligation. For instance, a witness, already in attendance at one Court, would be under no obligation to go to a Court at a distance, until he had given his evidence in the case for which he had been first cited.

In order to sustain a charge under s. 174 for disobedience to a summons issued by a Civil Court, it is necessary to prove personal service of the summons in accordance with ss. 155 & 156 of Act VIII of 1859 (3 R.C.C.C.R. 34.) And, therefore, where a summons was not served personally on the defendant, but affixed to the door of his house, and he failed to attend, it was held that he had committed no offence. (6 Mad. H.C. Rul. 29.) A merely verbal order given at any stage of a trial to a person already summoned, directing him to return on a specified day to which the hearing is adjourned, is a sufficient notice to entail the penalties of this section for non-attendance. (5 Ibid. 15, and see 7 Ibid. 3.) But it would be otherwise if the order was a general one to appear again when required, no particular day being named (6 Ibid. 10); and an adjournment of a trial by public proclamation is irregular and objectionable. Special notification should be given to all parties concerned of the date of the adjourned hearing. (Ibid. 30.) The summons must also specify the place at which the person summoned is to attend. If it fail to do so, the conviction for disobedience would be illegal. (7 Ibid. 14.)

This section has been held not to apply to an escape from custody under a warrant in execution of the decree of a Civil Court. (1 Bomb. H.C. 38; 7 Mad. H.C. Rul. 43.) It does apply to the case of a defendant in a criminal case who had given bail for his appearance, and had also entered into his own personal recognizance. It

was held to be no objection to a charge under s. 274 that his surety had already been made to pay in default of his appearance, and that he himself was liable to have his own recognizance forfeited under s. 219 of the Crim. P.C. (1 B.A. Cr. 1.)

The Madras High Court holds that a Sub-Magistrate may try a case under this section for disobedience to his own summons, the provisions of s. 171 (now s. 471) Crim. P.C. being permissive and not imperative. (4 Mad. H.C. Rul. 52.) The High Court of Bengal, over-ruling a former decision in accordance with the view of the Madras High Court, has now decided the contrary. (5 B.L.R. 100. See, too, 8 Ibid. 422.)

Omission to produce a document to a public servant by a person legally bound to produce such document.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same. A has committed the offence defined in this section.

It is necessary to show that the person was legally bound to produce the document, and if the necessary steps have not been taken to impose that obligation upon him, he does not come under this section. For instance, a witness who intentionally leaves at home a document which he knows will be called for is not punishable, unless the proper notice to produce, or *subpœna duces* has been served upon him. There are many documents which a witness may refuse to deliver up, on the ground of their being privileged, but he will still be bound to bring them into Court if they are in his power, and the Court will decide as to the question of privilege. (Act I of 1872, s. 162.) In the case of State Proceedings, however, the Court cannot even inspect them for the purpose of seeing if they are privileged (*Ibid.*) and must take their character upon the word of the public officer who has them in his custody. (Beatson *v.* Skene, 29 L.J. Ex. 430; 5 H. & N. 838, and Act I of 1872, s. 123.) But the oath of secrecy which is taken by Income Tax Officers under Act XXXII of 1860, s. 33 does not apply to cases in which they are summoned to give evidence in a Court of Justice (Lee *v.* Birrell, 3 Camp. 337); and in a recent case, Scotland,

C.J. compelled the production of Income Tax Schedules, though the objection was taken by the officer who appeared. (Reg. *v.* Yakatazkhan, 2nd Madras Sessions, 1863.)

"When any such offence as is described in Section 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he be a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may take cognizance of the offence, and adjudge the offender to punishment, by a fine not exceeding two hundred Rupees, and, in default of payment, by imprisonment in the Civil Jail for a period not exceeding one month, unless such fine be sooner paid. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make as well as the finding and sentence. If the offence is under s. 288 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which such public servant was sitting, and the nature of the interruption or insult offered. (Cr. P.C., s. 435.) If the Court, in any case, considers that a person accused of any such offence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred Rupees should be imposed upon him, such Court, after recording the facts constituting the contempt and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Magistrate of the 1st class who is a Justice of the Peace and a European British subject, and shall cause bail to be taken for the appearance of such accused person before such Magistrate, or if sufficient bail be not tendered shall cause the accused person to be forwarded under custody to such Magistrate. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate, and such Magistrate may adjudge the offender to punishment as provided in the section of the Indian Penal Code under which he is charged. If, in the case of a European British subject, the Magistrate to whom he is forwarded considers the offence to require a more severe punishment than he is competent to award under Chap. VII of this Act, he may commit the offender to the Sessions Court. In no case tried under this section shall any Magistrate adjudge imprisonment, or a fine exceeding two hundred Rupees, for any contempt committed in his own presence against his own Court." (Cr. P.C., s. 436.)

A Court inflicting a fine for contempt of Court should specially record its reasons and the facts constituting the contempt, so that it may appear whether any contempt of Court was in fact committed. Where, therefore, no such reasons were recorded, the High Court of Madras on an application made under s. 404 of the Crim. P.C. set aside the order, and directed the fine to be returned (4 Mad. H.C. 229); the Court must also call upon the offender to make any statement he wishes to offer, and must record it. In default of doing so the conviction will be quashed (7 Bomb. A.C. 102); and, so, it has been laid down by the Privy Council, in a case where a Barrister had been summarily fined for contempt of Court, "that no person should be punished for contempt of Court, which is a criminal offence, unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given to him." (re Pollard, 2 L.R.P.C. 106.) The above Section (435), which contemplates a statement by the offender, is in accordance with this view.

It is not a contempt of Court punishable under s. 163 of the old Crim. P.C. (now s. 435) to refuse to sign a deposition given before a Tahsildar in a revenue enquiry. (6 Mad. H.C. Rul. 14.)

A Magistrate is not precluded by s. 436 from taking cognizance of a contempt of Court committed in his own presence, unless he thinks

that imprisonment without the option of a fine, or a fine of more than 200 Rupees, is demanded by the circumstances of the case. (6 Mad. H.C. Rul. 16.)

"When any Court has adjudged an offender to punishment, or forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may discharge the offender, or remit the punishment, on his submission to the order or requisition of such Court or on apology being made to its satisfaction." (Cr. P.C., s. 437.)

Omission to give notice or information to a public servant by a person legally bound to give notice or information.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice, or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the notice or information required to be given respects the commission of an offence (*see* s. 40, *ante* p. 25), or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both; or, if the information which he is legally bound to give respects the commission of an offence (*see* s. 40, *ante* p. 25), or is required for the purpose of preventing the commission of an offence, or in order

to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully mis-informs the Magistrate of the District that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under Clause 5, Section VII, Regulation III of 1821 of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police Station, wilfully mis-informs the Police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

Refusing oath when duly required to take oath by a public servant.

178. Whoever refuses to bind himself by an oath or affirmation (Act X of 1873, s. 15) to state the truth, when required so to bind, himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

A witness, who refuses without reasonable cause to answer questions put to him, may be committed to custody by a Magistrate for seven days, or by the Sessions Court for such reasonable time as it deems proper, unless in meantime he consents to answer. If he persists in his refusal he may be dealt with according to s. 435 or 436 of the Criminal Procedure Code. (Cr. P.C., ss. 356 & 364.)

In a case, in England, a father was indicted for an aggravated assault upon his son, and the son refused to give evidence against his father. The Court committed him summarily to prison for one month. (Reg. *v.* Baron Vidil, C.C. Ct. 23rd August 1861.) Feelings of friendship are not such a "just excuse for refusal" as authorize an individual to obstruct the course of law. Even the relationship of husband and wife is no bar to the admissibility of either in criminal proceedings. (Act I of 1872, s. 120.)

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Refusing to answer a public servant authorized to question.

See Cr. P.C., s. 436, *ante* p. 145.

As to the powers of Police Officers to require persons, having knowledge bearing upon a crime, to answer questions with a view to preliminary investigation, see Cr. P.C., s. 118 & 119.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

Refusing to sign statement.

See Cr. P.C., s. 436, *ante* p. 145.

A person making a deposition in a revenue enquiry is not bound to sign such deposition, and cannot be punished under this section for refusing to do so. (Mad. H.C. Rul. 18th Jan. 1870.)

181. Whoever, being legally bound by an oath or affirmation (Act X of 1873, s. 15) to state the truth on any subject to any public servant or other person authorized by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either

False statement on oath to public servant or person authorized to administer oath.

description for a term which may extend to three years, and shall also be liable to fine.

A person is not legally bound to state the truth, where the officer who administers the oath is trying a case wholly beyond his jurisdiction. (2 Mad. H.C. 438, and see note to s. 192.)

The Madras High Court have held that a witness in a criminal case who gives false evidence before a Magistrate, may be convicted by a Magistrate under s. 181, though he might also have been charged under s. 193, and, if so charged, would only have been triable by the Sessions Court. (4 Mad. H.C. Appx. 18.) An opposite decision has been arrived at by the Bombay High Court (8 Bomb. C.C. 21) and by the Calcutta High Court (8 W.R. Cr. 27, 30.) The latter ruling seems to me to be the sounder.

False information, with intent to cause a public servant to use his lawful power to the injury of another person.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Illustrations.

(*a*) A informs a Magistrate that Z, a Police Officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(*b*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

Where A, out of malice to B, gives to C, a public servant, false information intended to injure B, the latter cannot prosecute A

criminally, without obtaining the consent of C, under s. 168 (now s. 467) of the Crim. P.C. (5 R.C.C.C.R. 37; 3 N.W.P. 194.) Statements made by a prisoner in his defence do not come within this section. (2 N.W.P. 128.)

There is good deal of uncertainty in ss. 174 to 182 from the use of the words "legally bound" without any explanation, and with very few illustrations, as to the cases in which a person is legally bound. The instances given under s. 174 of persons legally bound to attend, in obedience to a summons, relate to summonses to give evidence before a Court of Justice. Punchayets are also authorized to summon witnesses before them. (Regs. V, VII, XII of 1816.) By Reg. XXVIII of 1802, s. 34, cl. 8, Zemindars and other landholders possessed the power of summoning, and if necessary of compelling the attendance of their tenants for the adjustment of their rents, or for measuring lands within their respective estates which may be liable to measurement *or for any other lawful purpose.* But no such power is given by the Madras Rent Act VIII of 1865 which repeals Reg. XXVIII of 1802. Therefore, disobedience to such summons would not now be punishable.

There is a difference between ss. 176 & 177 and the previous ss. 118—120 in this respect, that the offence punishable under ss. 118—120 is only committed when the concealment or mis-representation is done by the person with an intention to facilitate the commission of an offence, or the knowledge that the offence will be facilitated. In ss. 176 & 177 the guilt consists simply in the breach of duty, apart from any ulterior views which the offender may have had. In these sections I conceive that the words "legally bound" refer to some special obligation created by Statute, or arising out of the rank or office of the party concerned, different from his ordinary duty as a citizen. For instance, by Reg. XXV of 1802, s. 15, it is enacted that

"Zemindars shall aid and assist the Officers of Government in apprehending and securing offenders of all descriptions, and they shall enquire and give notice to the Magistrates of robbers or other disturbers of the public peace who may be found, or who may seek refuge within their Zemindaries."

Of course, all persons directly concerned in the preservation of the peace and the administration of criminal justice are under an express obligation to activity in this respect. Such a duty is cast upon heads of villages, by the unrepealed ss. 8 & 9 of Reg. XI of 1816, (3 Mad. H.C. Appx. 30,) and is expressly laid down by the Cr. P.C., s. 90.

"Every village headman, village watchman, owner or occupier of land, or the agent of any such owner or occupier, and every native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest Police Station, any information which he may obtain respecting

(*a*) The residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rents or revenue, as the case may be;

(b) The resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(c) The commission or intent to commit suttee or other non-bailable offence at or near such village;

(d) The occurrence of any sudden or unnatural death." (Cr. P.C., s. 90.)

Again, under s. 89 of the Crim. P.C.,

"*Every* person aware of the commission of any offence made punishable under ss. 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392 to 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, 460 of the Indian Penal Code, shall in the absence of reasonable excuse, the burthen of proving which shall be upon such person, give information of the same to the nearest Police Officer or Magistrate."

Under this section a person is bound to give information of a house-breaking, but not of a simple theft. (5 R.J. & P. 100.)

It is also to be remarked, that whereas ss. 118—120 only refer to information relative to the commission of offences, ss. 176 & 177 refer to any information which the party is legally bound to afford. For instance, if a tahsildar were called on to report upon the state of the crops in his division, or a curnum were directed to supply information as to the assessments of his village, any mis-statement or concealment would be criminal under these sections, even though no interested motive could be shown. Of course, where no such motive appeared, it would require conclusive evidence to show that the party was in actual possession of the information, before any conviction could be obtained. No crime will be committed under those sections, where a public officer through negligence is destitute of the knowledge which by proper diligence he might have acquired.

See 6 Mad. H.C. Rul. 48.

The word 'oath' is defined in s. 51, so as to include all solemn affirmations and declarations, whether intended to be used in a Court of Justice or not. The offence referred to in s. 178 will, however, in general, be committed in Judicial proceedings. The same remarks apply to the ensuing ss. 179—181.

Resistance to the taking of property by the lawful authority of a public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

If a bailiff break the doors of a third person, in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; where,

therefore, the owner of the house was charged under s. 183 for obstructing the bailiff, the High Court of Bombay reversed the conviction. The Court, after citing Semayne's case as applicable to this country, said, "Now, in the present case, there is no evidence whatever that there were any goods of the debtor in the house of the accused Gazi, and in the absence of such evidence the presumption must be in her favour that there were no such goods. As there was no such property in the house, Gazi did not offer any resistance to the taking of any property by the lawful authority of a public servant, which is the offence of which she has been convicted under s. 183. Nor could she be convicted under what would appear to be a more appropriate section, namely, s. 186, for voluntarily obstructing a public servant in the discharge of his public function; for the bailiff would have been exceeding his functions if he had done that which Gazi prevented him from doing." (7 Bomb. C.C. 83.) But it may be doubted whether the last proposition is quite sound. The resistance could only be justified as an act done in private defence of property, and, if so, it would seem to come under the exception contained in s. 99, cl. 1, which forbids such defence against an act done by a public servant acting in good faith under colour of his office, though his act may not be strictly justifiable by law.

A bailiff is not justified in breaking open the debtor's door to execute the process of the Court. (3 R.C.C. Circ. 8; 7 Bomb. C.C. 85.) But under the operation of s. 99, cl. 1 & 2, resistance to such an illegal act would probably be punishable, and would certainly be so if any personal violence was used to the bailiff.

The Officer of the Court is always justified in breaking open doors in order to give over possession of real property, or to execute process in criminal cases. (Semayne's case, 1 Sm. L.C. Civ. P.C., s. 223; Cr. P.C., s. 180; 7 Bomb. C.C. 85.)

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

Obstructing sale of property offered for sale by authority of a public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal

Illegal purchase or bid for property offered for sale by authority of a public servant.

incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both.

Where property is sold for arrears of rent, it was formerly not competent for the defaulters or their sureties to purchase it. (Reg. XXVIII of 1802, s. 27.) Nor could property distrained for arrears be purchased by the distrainers or appraisers. (Ibid., s. 26.) But no corresponding provisions are contained in the Madras Rent Act VIII of 1865 (Madras) which repeals Reg. XXVIII of 1802.

A mock bidding for a lease of a ferry, set up to auction sale by a Magistrate, was held to come under this section. (5 R.J. & P. 38.)

Obstructing public servant in discharge of his public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

Escape from lawful custody is not punishable under this section; the charge should be under s. 224. (2 Bomb. H.C. 134.)

It would be incredible, if it were not true, that a Magistrate has actually been found to convict a person under this section, because, being the owner of a cart, he refused to give it on hire to a Government Officer who applied for it. It ought to be unnecessary to add that the conviction was annulled. (9 Ibid. 165.)

Omission to assist public servant when bound by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both; and if such assistance be demanded of him by a public

servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Rupees, or with both.

See as to the word "offence," s. 40, *ante* p. 25.

The person "bound by law to render assistance" under s. 187 will in general be public officials. There are, however, some cases in which even private persons are bound to render assistance.

A warrant may be addressed to a private person, and he will be justified in acting under it. But he is not bound to execute it and may refuse to have anything to do with it. (2 Hale 110.) But where an officer is entrusted with a warrant and engaged in its execution, or even where he is acting lawfully without a warrant, he is authorized to call all private persons to his assistance;

"For every man in such cases is bound to be aiding and assisting to these officers upon their charge and summons in preserving the peace, and apprehending of malefactors, specially felons. And if any *being thereunto called* shall not give their assistance they are to be punished by fine and imprisonment. (2 Hale 86.)

And so under Cr. P.C., s. 91.

"Every person is bound to assist a Magistrate or Police Officer demanding his aid in the prevention of a breach of the peace, or in the suppression of a riot or affray, or in the taking of any other person whom such Magistrate or Police officer is authorized to arrest." See Reg. *v.* Sherlock, 1 L.R.C.C. 30. See also Cr. P.C., s. 481.

Hue and cry is the old common law term for an immediate general pursuit, made freshly after the commission of a felony, in which it was the duty, not only of all Constables, but also of all private persons above fifteen, the inhabitants of the district, to join, on penalty of fine and imprisonment. This hue and cry might be set on foot by the warrant of a Justice of Peace, but this is not necessary, for it may be raised by any private person who knows of the felony. The party injured, or other person capable of giving information, should proceed at once to the Constable of the district and give him a full account of the circumstance of the case, and a description of the person accused, so as to enable him to judge whether a hue and cry ought to be raised. Thereupon, pursuit will be made, and as every one is bound to join in it, so every one who does join in it is protected, even though it turns out that there was no felony committed, or that the persons suspected are wholly innocent. But those who

raise hue and cry without sufficient cause will be punishable with fine and imprisonment. (2 Hale 98, 102.)

The Cr. P.C., s. 92, cl. 3 gives a Police Officer power to arrest without warrant "any person against whom a hue and cry has been raised of his having been concerned in any cognizable offence." Nothing is laid down, however, as to the nature of a hue and cry, or the process by which it is raised.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Disobedience to an order duly promulgated by a public servant.

Where increased punishment is inflicted under the last clause, the finding must state facts to show that the case contains elements of aggravation to warrant the punishment. (3 Bomb. Cr. 32.)

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys and that his disobedience produces, or is likely to produce harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession

shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in the section.

The validity of the order is immaterial, provided the order is promulgated by a public servant who has jurisdiction to pass it. But where the order is given by a person who had no authority whatever to pass such an order, the person against whom it is directed would be entitled to treat it as a mere nullity. (5 Bomb. H.C. Cr. 21.) For instance, a Magistrate has power to order a person to refrain from interfering with property claimed by another, but he has no power to order property to be sold, and any person affected by such order would be justified in setting it at nought.

Further, to constitute an offence under s. 188, there must not only be disobedience to an order, but the disobedience must cause or tend to cause some of the injurious results named in the section. Therefore, when a Magistrate issued an order that all persons who carried arms should take out licenses under Act XXXI of 1860, it was held that disobedience to such an order was not an offence under this section, as there was no evidence that it would cause or tend to cause annoyance, obstruction, &c. (3 B.L.R. Appx. 149.)

"A Magistrate of the district, or a Magistrate of a division of a district, or any Magistrate specially empowered, may, by a written order, direct any person to abstain from a certain act, or to take certain order with certain property in his possession or under his management, whenever such Magistrate shall consider that such direction is likely to prevent or tends to prevent obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury to any person lawfully employed, or danger to human life, health, or safety, or a riot or an affray." (Cr. P.C., s. 518.)

This section embraces many cases which in England would be called nuisances, and authorizes the Magistrate in such cases to interfere summarily. It is not confined to those acts and modes of enjoyment of property only which are in themselves unlawful. For instance, an order by a Magistrate prohibiting a Zemindar from holding a new market on his estate, close to an old established market belonging to a neighbouring Zemindar, on the ground that it had caused unlawful assemblies and raised apprehension of a breach of the peace, was held to be within his jurisdiction. In this particular instance the Court refrained from saying whether the Magistrate had exercised his discretion in a proper manner, or whether his order required any amendment as to duration or injunction; they also suggested that it might be unlawful for a Magistrate to issue an order under that section which would be utterly destructive of a man's right of property. (10 B.L.R. 434.) Under an analogous Section, (282 of Act XXV of 1861; X of 1872, s. 491,) an order by a Magistrate which had the effect of preventing a householder from building a wall to his own house, because his doing so might result in a breach of the peace between himself and his neighbour, was set aside as illegal. (10 B.L.R. 441.) This section can never be put in force except in order to prevent some one of the consequences recited in the latter part of the section. Therefore, an order by a Magistrate prohibiting the owners of cattle, sheep, and ponies from allowing them to stray

within the town was held not to be authorized by the section. (9 B. Appx. 36.) And, similarly, where the order was directed to two persons, directing them to remove a certain embankment whereby the adjacent lands of the complainant were in danger of being flooded, the High Court was of opinion that the order was *ultra vires*, and must be set aside. (5 Mad. H.C. Rul. 19.) But in the case of a public temple, frequented by a large concourse of pilgrims, an order directed to the hereditary priests, requiring them to enlarge the doorway, was held to be within the terms of the section, as being necessary to prevent danger to human life or safety. (6 Bomb. C.C. 36.) Nor should it be applied to cases falling under the terms of s. 521 of the Crim. P.C. unless a speedy remedy is absolutely required. (Cr. P.C., s. 518, Exp. I.)

"Whenever a Magistrate of the District or of a division of a District, or, when empowered by the local Government in this behalf, a Magistrate of the 1st class, considers that any unlawful obstruction or nuisance, should be removed from any thoroughfare or public place, or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed, or should be removed to a different place, or that the construction of any building or the disposal of any combustible substance, as likely to occasion conflagration, should be prevented, or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public, such Magistrate may issue an order to the person causing such obstruction or nuisance, or carrying on such trade or occupation, or being the owner or in possession of, or having control over, such building, substance, tank or well as aforesaid, calling on him, within a time to be fixed in the order, to remove such obstruction or nuisance, or to suppress or remove such trade or occupation, or to stop the construction of such building or to remove it, or to alter the disposal of such substance, or to fence such tank or well, (as the case may be) or appear before himself or some other Magistrate of the first or second class within the time mentioned in the order, and show cause why such order should not be enforced." (Crim. P.C., s. 521.)

Under either section, "the order ought to contain a clear statement of the facts which the Magistrate, in the exercise of his judicial discretion, considers to constitute the material facts of the case, and upon the footing of which he has made the order." (1 B.A. Cr. 23.)

See also Act XXIV of 1859 (Madras Police), s. 49 and Act V of 1861 (General Police) ss. 30—32 as to orders given by the Police in regard to obstructions in the public highways.

"A Magistrate of the district, or a Magistrate of a division of a district, or any Magistrate specially employed, may enjoin any person not to repeat or continue a public nuisance as defined in s. 268 of the Indian Penal Code, or under any special or local law." (Cr. P.C., s. 519.)

See also the various Acts for the conservancy and improvement of the Presidency Towns, *addenda*, MUNICIPAL RATES.

All the above enactments refer to cases in which the acts are *primâ facie* lawful, but are under their peculiar circumstances rightly prohibited, from their tendency to endanger the peace or safety of the public. For instance, a person has a perfect right to let his house go to ruin if he likes it; but if his ruinous house adjoins the public highway, a new consideration arises, apart from that of private property, and the owner may fairly be ordered to repair his house, or to pull it down. So, in the case of a public procession, which is put in

the illustration, where an act, lawful in itself, is prohibited on account of the danger which it may cause to the public tranquillity. (1 Mad. H.C. 50.)

It will be observed that the Magistrate has only power to direct or forbid certain acts; he cannot create or decide rights, which are exclusively for the decision of civil tribunals. He is also limited to certain grounds of interference, viz., obstruction, annoyance, or injury to the public, and where these do not exist, or may not fairly be apprehended, he has no authority to interfere. (4 Mad. H.C. Appx. 6.) On the other hand his orders cannot be cancelled by those of the civil authorities, as they rest on grounds which do not come within civil cognizance. The Civil Judge decides upon the rights of the parties before him, quite irrespectively of the consequences which may flow from the exercise of those rights. The Magistrate may admit the existence of the rights which have been adjudicated on by the civil power, and yet, on grounds of over-ruling public policy, declare that the exercise of those rights must be suspended.

A very common instance in which these questions have been discussed is in regard to the right to go with processions or insignia on the public highways. *Primâ facie* every individual has a right to pass along the public highways in any manner and with any number of attendants he chooses, provided he does no injury to any one else. And the fact that he has never done so before is no reason why he should not do so now. Accordingly, the Madras Sudder Court ruled that a priest had a right to pass with a palanquin in procession through the high street of Salem, accompanied by his disciples, bands of music, banners, &c., and laid it down that "such right is inherent in every subject of the State, not requiring to be created by sunnud or patent, and it lies upon those who would restrain him in its exercise, to show some law or custom having the force of law, depriving him of the privilege." (Mad. Dec. 219 of 1857.)

On the other hand, it has been ruled that the orders of a Magistrate, forbidding processions or the like, are conclusive until withdrawn, not as to the right which they do not affect, but as to the exercise of the right, and that such orders can neither be cancelled by the Civil nor Sessions Court, since neither of these tribunals are responsible for the public safety. (Mad. Dec. 214 of 1858; Ibid. 208 of 1860; 1 Mad. H.C. 50 affd., R.A. 40 of 1864 per Scotland, C.J. and Frere, J., November 21, 1864.) Beng. S.D. 265 of 1855. But such order may be withdrawn by a subsequent Magistrate, for he is, for the time being, the only fitting Judge of what the public interests require. (F.M.P. 18 of 1860, 1 March, 1860.)

On the same principle it has been ruled by the High Court in Bengal that where a Magistrate has acted under Chap. XX (now Chap. XXXIX) of the Criminal Procedure Code in removing nuisances or obstructions, no action will lie in a Civil Court to reverse his order, or for an injunction to prevent its being acted on. When the procedure laid down by the Code has been followed the act of the Magistrate is final. (4 B.F.B. 24; 2 Calc. 293.) This, however, does not prevent a suit being brought against the Magistrate to recover damages for the act. In such a suit, if it appears

that the Magistrate was acting judicially and within his jurisdiction, although his proceedings were careless and irregular, the action will fail. (7 B.L.R. 449.) If, on the other hand, he acted without jurisdiction, he will be liable, unless his case comes under the protection given by Act XVIII of 1850 to Magistrates who act *bonâ fide* but without jurisdiction. As to what constitutes *bonâ fides*, the Madras High Court appears to treat it in a manner more favourable to the Magistrate than the High Court in Bengal. The latter Court considers that a Magistrate who has misconstrued the law is only protected, if his proceedings have been in other respects regular, and if the view of the law taken by him is such as a reasonable and careful man might take. (4 B.A.C. 37.) The Madras High Court treats *bonâ fides* as a simple fact, to be ascertained with reference to the state of mind of the individual Magistrate at the time he committed the act complained of. The unreasonableness of his error or the impropriety of his motives would, of course, be strong evidence that he did not believe in his own jurisdiction. Therefore, where it was found as a matter of fact that the Magistrate, in removing what he considered to be a nuisance under Chap. XX, did in fact believe that he was warranted in so acting, though his belief was hastily formed, and one which he would not have arrived at with a reasonably competent knowledge of the law, the High Court held that he was protected under Act XVIII of 1850. (5 Mad. H.C. 345; 6 Ibid. 423.)

A very important question may arise as to whether a Magistrate should invariably prohibit certain acts, merely upon the ground that they may endanger public tranquillity. There may be cases in which religious or political bigotry will render it certain that a disturbance will ensue upon the exercise of certain rights, and yet it may be the duty of the Magistrate to support the parties who claim that exercise in the face of all opposition. For instance, the establishment of a Christian place of worship in a Brahmin's village, and the attendance of Native converts at Divine worship, might be certain to produce a breach of the peace, and yet it would, I conceive, be the duty of the Magistrate to call out an armed force, if necessary, rather than to allow unoffending persons to be intimidated out of their lawful privileges. I imagine the true rule to be, that where the exercise of a right is a mere luxury, the temporary denial of which would not practically interfere with a man's general rights as a subject, he may fairly be forbidden to enforce his rights at the risk of public disturbance. But where the right is one of a substantial nature, which enters into the daily usages of life, there the Magistrate is bound to support the subject against illegal opposition. Tranquillity ought not to be maintained by a sacrifice of liberty. For instance, I conceive the Magistrate ought, at all hazard, to support every sect in the practice of their religious rites in such places as are set apart for them. This is a substantial right; but if they wish to parade about the streets with the symbols of their faith this is a mere luxury, and may fitly be refused if it is likely to be attended with a disturbance. In one of the cases I have mentioned above (F.M.P. 57 of 1859) the dispute was as to the right of a certain low caste in Tinnevelly to carry their corpses to burial along the public road, there being admittedly no other. In that case it seems to me that the right

claimed was of so substantial a nature that all possible aid should have been given in its support. It is evident that in all these cases half the opposition would die away when it was known that Government was not enlisted in its favor. Nothing fosters caste prejudice like Magisterial countenance.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Threat of injury to a public servant.

I conceive that the injury referred to in the above sections need not necessarily be an illegal injury, and that any threat of harm which is not the lawful result of the act itself is prohibited. For instance, it is perfectly lawful to prosecute a public servant for bribery. But if a suitor were to threaten a Moonsiff with disclosure of an act of bribery, in order to influence his decision in a suit pending before him, this would be a criminal act. If however an official were about to perform an illegal act, it would not be criminal to threaten that he should be reported and held up to the displeasure of his superiors. For this would be merely the lawful result of the act which he was committing.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury, to any public servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Threat of injury to induce any person to refrain from applying for protection to a public servant.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Giving false evidence.

191. Whoever being legally bound on an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of the section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of the section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*) A, in support of a just claim which B has against Z for one thousand Rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief and is true as to his belief, and, therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at the place on the day named or not.

(*e*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be a true interpretation or translation. A has given false evidence.

Fabricating false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(*a*) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*) A makes a false entry in his shop book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

The two previous sections go very much beyond the old criminal law as to perjury. Perjury at common law could only be committed where the false statement had reference to some judicial proceeding. Hence, where Statutes provided for solemn declarations being made, or oaths taken in non-judicial proceedings, as for instance under the Marriage Act, it has been customary to add a clause, extending the penalties of perjury to any falsehood contained in such declaration. Under the present Act the distinction only exists in reference to the degree of punishment imposed.

Section 191 includes all cases in which a party is expressly bound to make a statement and a true statement. It does not apply to

merely voluntary statements such as form the basis of a contract. Nor to false statements in a complaint to the Police. (2 R.J. & P. 25.) A merchant who returns his income to the Income-tax Commissioners for assessment is making a statement which he is bound by law to make and to make truly. And so it would be in the case of a person who fills up untruly the Municipal assessment paper which is sent to him, or who gives false answers to questions put to him by a Registrar of deeds under Act XX of 1866. (2 R.C.C.C.R. 61.) But a horse-dealer who makes a false statement as to the soundness of a horse would not come under this section. He is not bound by an oath, or anything equivalent; there is no express provision of law which binds him to state the truth, nor is he bound by law to make any declaration at all upon the point. And so it is laid down by Act X of 1873, s. 14 that "every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject."

The word 'oath' is defined in s. 51. See too Act X of 1873.

The offence will equally have been committed whether the statement was known to be false, or was put forward as true, without any reason to conceive it to be true. But it must appear that the statement was deliberate and intentional. This can, in general, only be judged of by the surrounding circumstances. Where a witness falsely asserts or denies a fact of which he must be cognizant, which he cannot well have forgotten, and which is so important that his attention must have been directed to it, there can be little doubt that he has perjured himself. But, on the other hand, great allowances must be made for a man who has been kept a whole day under the ordeal of examination, cross-examination, and re-examination; who has been questioned minutely as to complicated transactions, which he may have forgotten, or taken up erroneously from the first; and who is plunged into that pardonable perplexity and confusion to which a practised advocate will often reduce the most honest witness. And hence it is an invariable rule, that the whole of a deposition or affidavit is to be taken together, and one part explained by the other, or even by a subsequent answer. For till this is done, you have not got at the full meaning of the witness. (Arch. 710.)

The false statement must be one which will lead the judicial officer to form a false opinion upon a point material to the merits of the case. Therefore, when a Vakil, who had got a genuine Vakalutnamah, forged the Magistrate's authentication to the signature, it was held that this was not an offence indictable under s. 193, as the Vakalutnamah was not evidence, and the error (if any) induced in the mind of the Judge as to its genuineness could not affect his decision of the case. (5 Mad. H.C. 373.)

By English law perjury must be proved by two witnesses, or by one witness, confirmed either by a written document, or by some material and relevant facts which contradict the statement upon which the perjury is assigned. For, otherwise, there would be merely oath against oath, and the presumption of innocence would turn the scale in favour of the prisoner. (Arch. 245, 713.) But under

the Indian Evidence Act I of 1872, s. 134, no particular number of witnesses shall in any case be required to prove any fact.

Under Reg. III of 1826, proof that a party had given two directly contradictory depositions was sufficient to secure a conviction for perjury, without showing which of them was in fact untrue. But this Regulation has been repealed by Act XVII of 1862. Accordingly, it was laid down by the Madras Sudder Court, that, "on a prosecution under s. 193 of the Indian Penal Code, for intentionally giving false evidence in a judicial proceeding, it will not be sufficient merely to show that the defendant's statement is opposed to some other made by him on oath or affirmation, but it must be shown that such statement was false, and that the defendant knew it to be so." (Sudder Court Rules, 28th April, 1862.) So in Calcutta. (1 R.J. & P. 65, 244.) But both Courts are now agreed that in such a case, where perjury is charged upon each of the contradictory statements and it is impossible to decide which of them is false, there may be a conviction in the alternative under s. 72. (B.L.R. Sup. 521; 13 Ibid. 324; 4 Mad. H.C. 51, and see a form of alternative charge in Sched. III to the Cr. P.C.)

It is hardly necessary to remark, that the mere circumstance that the same man, at different times, made contradictory statements upon the same point, is by no means conclusive proof of guilt. Either statement may have been made under the influence of forgetfulness or misapprehension; or he may, when he made the second statement, have discovered the falsity of what he had believed to be true when he made the first statement. Still less would it be safe to convict, when each statement merely conveys an expression of opinion. For instance, as to the identification of property, or the similarity of handwriting. The statements must relate to matters so necessarily within the knowledge of the party on both occasions, that one or other statement must have been known to be false when it was made. For instance, if a man were at one time to swear that he had been beaten and robbed, and at another time were to swear he had neither been beaten nor robbed, either assertion may be true, but he must have known one or other to be untrue. (See remarks of Bengal High Court Acc. 4 B.A. Cr. 12.)

Where it is intended to charge a person in the alternative for having made contradictory statements before different tribunals, there must be a proper sanction for a prosecution on each branch of the alternative. (11 Bomb. H.C. 34.)

A good deal of the old law upon the subject of perjury turned upon the fact that an oath, or an affirmation rendered equivalent to it by law, was an essential element of the offence.

Under the present Act an oath is merely one of the forms by which a party may be bound to speak the truth. Hence, even if an oath were unnecessarily and improperly administered by an incompetent person, as, for instance, if the Municipal Commissioner should force a rate-payer to swear to the truth of his return, still the offence constituted by s. 191 would be committed, if the party making the statement were under a legal obligation to speak the truth even without an oath.

But where some particular ceremony is necessary, as a condition without which the person is under no legal obligation to speak the truth, the offence of giving false evidence cannot be committed if that ceremony has not taken place. Therefore, when the evidence of a Native Christian as a witness was given on solemn affirmation, and not on oath, the Madras High Court held that he could not be convicted under s. 193.

"It was essential to prove that the prisoner, at the time he made the false statement, was under a legal obligation as a witness to state the truth, and to constitute that obligation in the case of a witness in a judicial proceeding who professes the Christian faith, the sanction of an oath on the Holy Gospels is an absolute requirement of the law. Act V of 1840, which gives to the affirmation made by the prisoner the same legal effect as an oath, applies only to persons who are Hindus and Mahomedans by religion as well as by birth." (4 Mad. H.C. 185.)

Formerly, a witness might decline to answer any question which tended to criminate himself. But now he is compelled to answer, and although his answer, if true, cannot be used against him, if false it will subject him to punishment. (Act I of 1872, s. 132; 3 Mad. H.C. Appx. 29.)

The offence of fabricating false evidence under s. 192 is confined to cases in which the intention of the fabricator is to produce "an erroneous opinion touching any point material to the result." But what will be the case if the intention is to produce a correct opinion? Suppose, for instance, that a shopkeeper who has actually supplied a person with goods, but has no entry in his books, were to forge an entry as corroborative evidence. The result would be to induce the Judge to come to a perfectly sound view of the point in issue, viz., whether the articles had been supplied. But he would have been led to an erroneous opinion, not as to the result of the proceeding, but as to a point material to the result, viz., whether the plaintiff's books contained such an entry as might naturally be looked for under the circumstances. So that the real meaning of the section is, just as the old law upon perjury was, that the false statement must be upon a point material to the issue. It will be observed that in this respect there is a difference between ss. 191 & 193 on the one hand, and s. 192 and the subsequent ss. 197 to 200 on the other hand. In the former sections the offence of giving false evidence is made to consist in giving *any* false statement, and nothing is said as to its being a statement material to the point. The omission is evidently intentional, since in the original draft (s. 188) the words "touching any point material to the result" were introduced. And so it has been ruled, that the materiality of the subject-matter of the statement is not a substantial part of the offence of giving false evidence under ss. 191 & 199. (Reg. *v.* Aidrus Sahib, 1 Mad. H.C. 38; 2 R.C.C.C.R. 65.) Where, however, a criminal indictment is based upon a false statement as to a wholly immaterial fact, it will often be successfully contended that the knowledge of its falsity, which is necessary to secure conviction, has not been made out. Where a party deliberately makes an untrue statement as to a very material circumstance, to which his attention is likely to have been directed, and when this false statement is for his own benefit, or for that of the person calling him, it may be assumed that he knew he was deposing falsely. But no

such presumption can arise where the point was irrelevant, and one upon which he might have answered either way, with equal absence of result. In such a case a Court would seldom be justified in exercising the powers of committal vested in it by the Cr. P.C., s. 468, *post* p. 168.

The word 'omission' in Act X of 1873, s. 13, applies to any omission whether accidental, negligent or intentional. (14 B.L.R. 294.)

Even under s. 192, false evidence which is material will be indictable, though it ought not to have been admitted at all, as not being in accordance with the principles of evidence. For instance, where a witness was called to contradict a previous witness upon a point which only went to his credit, it was ruled that he might be indicted for perjury, since his evidence was material, though, being on a collateral point, it ought not to have been received. (Reg. *v.* Gibbons, 31 L.J.M.C. 98; L. & C. 109.) And so it would be if a witness gave a false statement as to the contents of a writing, although he ought never to have been asked the question.

Anything will constitute a statement under s. 192 if it purports to embody a fact, and is capable of being used as evidence. For instance, the fabrication of a bill of lading with the Captain's name to it would be a statement by him that he had received certain goods on board the ship. A question may, however, arise where the document is a genuine one, but some addition involving a statement is made to it. Suppose the case of an assignment of land, perfectly genuine, coming in evidence before a Court. Would it be a fabrication of false evidence to put a dead man's name to the bottom of it, for the purpose of giving it the credit of another witness? The definition of a document in s. 29, (*ante* p. 21) seems to enable the Court to treat any false statement, though only a portion of a writing, as a false document, so as to support a conviction. Such an act would also amount to forgery under s. 463.

But where a person made an application for a new trial to a Small Cause Court, under s. 21 of Act XI of 1865, and for that purpose put in a memorandum of the grounds of the application, and signed a verification clause at the end, and such memorandum was shown to be false to the knowledge of the party making it, it was held that he was not punishable under s. 191 or 192. It did not come within the terms of s. 191 as he was not bound by oath or by any express provision to state the truth in the memorandum, or to make the statement at all. Nor did it come under s. 192, since, so far as the memorandum contained a statement of fact, it operated not as evidence, but merely as a statement of what the applicant was prepared to prove by evidence. (2 B.A. Cr. 1.)

On the other hand, the Civ. Pro. Code (Act VIII of 1859, s. 24) expressly provides that—

"If any plain, written statement, or declaration, required by this Act to be verified, shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment, according to the provision of the law for the time being in force, for the punishment of giving or fabricating false evidence." (See ss. 27 & 123.)

To sustain a charge under this section some express clause must be shown which requires a statement to be verified. Therefore, it is not indictable to make a false statement in an application under s. 119, to have a civil suit reheard, after an ex-parte decree. (5 R. C.C.C.R. 58.)

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court Martial or before a Military Court of Request is a Judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a state-

ment which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

The phrase "judicial proceeding" which occurs so frequently in this section is not defined in this Code. In general the phrase means a proceeding which takes place before a Judge, who is acting in the discharge of his office, see *ante* p. 56. This is not its meaning here, however. The word Judge is defined in s. 19, *ante* p. 17, so as to exclude all officers who are not authorized to give definitive judgment. A judicial proceeding under this section means "any step taken by the Court in the course of administration of justice, in connection with a case pending," (1 Mad. H.C. 46) even though the stage in which the false evidence is given is one in which no judgment can be given, and which may possibly terminate the case, so that no judgment will ever be given. Under the Cr. P.C., s. 4, a "judicial proceeding" is defined as meaning any proceeding in the course of which evidence is or may be taken, or in which any judgment, sentence, or final order is passed on recorded evidence. Orders under ss. 518 & 519 of the Cr. P.C. are not judicial proceedings, but an order under s. 521 is. (Cr. P.C. ss. 520, 521.)

But it would be otherwise where the inquiry was conducted for some purpose wholly unconnected with the judicial proceedings. For instance, where a Magistrate received an anonymous letter, charging some persons with murder, and took evidence, not for the purpose of tracing the murder, but of ascertaining the author of the letter, it was held that the inquiry was not a "stage of a judicial proceeding," and that a conviction under s. 192 could not be sustained. (1 R.C.C. C.R. 71.) And similarly where the object of the inquiry was to discover the writer of a scandalous petition. (11 Bomb. H.C. 11.) And so the preparation of false accounts, with the intention of producing them before a forest officer, who was not authorized to hold an investigation, was held not to be an offence under s. 193 (12 Bomb. 1.)

Hence, where it appeared that the bailiffs of a Court, twelve in number, were constantly called upon to give evidence as to the service of summonses in the different cases before the Court, and that it was the practice to call them all up at the beginning of each day, and to affirm them solemnly to give true evidence in all the cases coming before the Court that day, and one of the bailiffs at a later period of the day gave false evidence, it was held that he was properly convicted under s. 193, the affirmation being administered in "a stage of a judicial proceeding." (Reg. *v.* Venkatachalam Pillai, 2 Mad. H.C. 43.) But where a Judge without any authority altered the title of a cause, so as to change it into another which had never been legally instituted, and after such charge the prisoner was sworn and gave false evidence, it was held that the conviction was bad. Cockburn, C.J., said, "I think that the alleged perjury was committed on the hearing of a cause which had no existence, and in which the Judge had no jurisdiction." (Reg. *v.* Pearce, 32 L.J.M.C. 75.)

Several false statements contained in the same deposition constitute only one offence. (6 Mad. H.C. Rul. 271.)

Under the Cr. P.C., s. 468 "a complaint of an offence against Public Justice, described in ss. 193—196, 199, 200, 205—211, or 228 of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court, shall not be entertained in the Criminal Courts, except with the sanction of the Civil or Criminal Court before or against which the offence was committed, or of some other Court to which such Court was subordinate."

As to the nature of the sanction, and the time at which it may be given, see s. 470, *ante* p. 139.

Applications under this section should, as a general rule, be made first to the Court before which the perjury is alleged to have been committed. (6 Mad. H.C. 92.) But where the original Court had believed the evidence, which was pronounced in the High Court to be untrustworthy, the application would properly be made to the High Court, which first considered that perjury had been committed.

Proceedings taken without sanction are wholly without jurisdiction, and any conviction had under them must be quashed. (7 B.L.R. 26.) It is important, therefore, to consider the effect of the proviso, "Such sanction may be given at any time," which is found in s. 470, as contrasted with the words, "the sanction must be given before the commencement of the proceedings" which are found in s. 466, *ante* p. 131. I imagine it means, at any time before conviction, and, if so, the sanction whenever given would relate back to the institution of the charge, and give validity to all subsequent proceedings. (See 7 Mad. H.C. 58.)

The terms of s. 470 apparently over-rule some decisions under the former Cr. P.C., which laid down that sanction, not expressly given, might be implied from the fact, that the officer who ought to have given the sanction had proceeded with the case. (5 Bomb. H.C.C.C. 38; 6 Ibid. 54.) Also, that a sanction to a prosecution for false evidence should state the exact words which the Judge considers to be false. (5 R.C.C.C.R. 61.)

"But," the Bombay Court remarks, "we do not think that the new enactment is intended to provide for a sanction expressed with so little definiteness as equally to justify the prosecution of any person for any offence and in any Court whatever. The sanction given must refer to the Court in which the false statement is alleged to have been given, and it must also refer to the occasion on which it was given. Both must be properly designated in order that the trying Court may inform itself as to the investigation or trial upon which it is really authorized to enter and generally also, we think that it is desirable for the ends of justice, if not necessary, to state the offence intended to be charged in general terms, though details need not be given." (11 Bomb. H.C. 34.)

It is no ground for refusing sanction for a prosecution for giving false evidence, that the evidence was given before the predecessor in office of the officer to whom the application is made. The Court is still the same, though the incumbent is different. (7 Mad. H.C. Rul. 12.)

Where such Court thinks it proper to investigate such a charge, the Court, after making any preliminary inquiry that is necessary, may commit the case to a Magistrate having power to try or commit, who shall thereupon proceed according to law, and the Court may send the accused person in custody, or take bail for his appearance, and bind over persons to give evidence. (Cr. P.C., s. 471.) This preliminary enquiry by the Court may be *ex parte.* (5 R.C.C.C.R. 19.) Where the offence is committed before a Court of Session, it may proceed to try the prisoner upon its own charge. (Cr. P.C., s. 472.) Where the offence is committed before a Civil Court, and is one triable exclusively by the Sessions Court, it may itself commit to the Sessions Court, (Ibid. s. 474) and frame a charge, and transmit the record to a Magistrate to bring before the Sessions Court. (Ibid. s. 475.) But if triable exclusively by a Sessions Court, and committed before a Magistrate who has not power to commit to a Sessions Court, he may transmit the case to a Magistrate competent to make such commitment. (Ibid., s. 477, and see Act XXIII of 1861, ss. 16—18.)

There is a conflict between the High Courts of the different Presidencies as to the power of an official, in other respects competent, to try an offender for any of the offences enumerated under s. 468 of the Cr. P.C., when such offences were committed before himself. The High Courts of Madras and Bombay hold that giving false evidence is a contempt of the authority of the Court before which it is given; therefore that it comes within s. 473 of the Cr. P.C., which forbids any Court to try an offence committed in contempt of its own authority except as provided in ss. 435, 436 & 472. (7 Mad. H.C. Rul. 17; 10 Bomb. H.C. 73; 1 Bomb. L.R. 311, 339.) The same ruling would I presume be applied to all the other offences recited in s. 468. The High Court of Calcutta holds that giving false evidence does not come within s. 473 but that the Court must adopt the procedure laid down by s. 471, that is send the case for trial to another official. (22 W.R. Cr. 49.) This view was also taken by the High Court of the N.W. Provinces. (1 All. 129; 7 N.W.P. 132.) But in two later cases the same Court, while agreeing that the case did not come within s. 473 was also of opinion that the procedure under s. 471 was optional and not compulsory. Consequently that the Court might try the case itself. (1 All. 162, 193.)

A Magistrate before whom false evidence has been given cannot himself try the offence. (10 Bomb. H.C. 73; Cr. P.C., s. 473.)

When a witness makes one statement before the committing Magistrate and a contradictory statement before the Sessions Judge, and there is nothing to show which of the two statements is false, he has not committed an offence before the Sessions Court which will authorize that Court to try him on its own charge under s. 172 of the Crim. P.C. (4 B.A. Cr. 9.)

A person who has been previously convicted of any offence under s. 193, 194, or 195 is also liable to whipping upon a second conviction. (Act VI of 1864, s. 4.)

Giving or fabricating false evidence with intent to procure conviction of a capital offence.

If innocent person be thereby convicted and executed.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code, or by the law of England, (Act XXVII of 1870, s. 7,) shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

A man who, on the trial of A for murder, states that the murder was not committed by A, but that it was committed by B, who is not in custody, has not committed an offence under s. 194, as his evidence, so given, cannot cause any person to be convicted of a capital offence. He is only punishable under s. 193. (3 B.A. Cr. 35.)

See Act VI of 1864, s. 4, supra, note to s. 193. As to the word "offence" in this and the following section, see s. 40 *ante* p. 25.

Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by this Code, or by the law of England, (Act XXVII of 1870, s. 7,) is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment with or without fine.

See Act VI of 1864, s. 4, supra, note to s. 193.

196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

On an indictment under this section, the first thing is to show that the evidence was false or fabricated, and next to establish a guilty knowledge. The mere fact that the party has produced the false evidence will, in general, be enough to throw on him the burden of showing his innocence. Accordingly it has been

"Held that a debtor producing a witness, who deposed falsely to his having witnessed a payment to the creditor, forms sufficient presumptive evidence against the debtor to convict him of subornation of perjury." (1 M. Dig. 122, § 475.)

And, so, in another case, where the party produced the false witness in Court through a Vakeel, being himself absent. (1 M. Dig. 171, § 493.) But where the prisoner was a minor at the time the perjury was committed in his favour, and did not appear to have been personally concerned in the subornation, though present at the time and profiting by it, he was acquitted. (1 Ibid. 173, § 485.)

In a recent case the law upon this point was laid down by Sir Adam Bittleston in the following terms :—

"If a person calls witnesses in support of a statement which he makes, and causes those witnesses to come into the box for the purpose of giving evidence which he knows to be untrue, and they give that evidence, and the jury find that they knew it to be untrue, that is evidence on which a jury may find that he solicited them ; but the jury must be satisfied that he knew that the statement which they were called to make must be untrue to their own knowledge." (Reg. *v.* Gungammah, 3rd Madras Sess. 1860.)

It is not sufficient that he should know or believe the statement to be untrue. It is necessary that the witnesses should have the same knowledge, for, otherwise, the evidence is not false.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Issuing or signing a false certificate.

198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as a true certificate one known to be false in a material point.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

False statement made in any declaration which is by law receivable as evidence.

See Act III of 1872, s. 21.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true any such declaration known to be false.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of Sections 199 & 200.

201. Whoever, knowing or having reason to believe that an offence (*see* s. 40, *ante* p. 25) has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting

Causing disappearance of evidence of an offence committed or giving false information touching it, to screen the offender.

the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and if the offence is punishable with transportation for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine; and if the offence is punishable with imprisonment for any term not extending to ten years shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

If a capital offence.

If punishable with transportation.

If punishable with less than ten years' imprisonment.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

The High Court of Bengal has ruled that this section "applies to the causing the disappearance of evidence of an offence committed by another, not by one's self." (1 R.C.C. Circ. 19.) The person who commits an offence and afterwards conceals the evidence of it, cannot be punished on both heads of the charge. (3 R.C.C. Circ. 3.) The act must also be committed with the object of screening the offender from punishment. Disposing of a dead body in order to save the annoyance of a Police investigation is not punishable. (5 N.W.P. 186.)

Intentional omission to give information of an offence by a person bound to inform.

202. Whoever, knowing or having reason to believe that an offence (*see* s. 40, *ante* p. 25) has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished

with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Giving false information respecting an offence committed.

203. Whoever, knowing or having reason to believe that an offence (*see* s. 40, *ante* p. 25) has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

With the single exception of the clause relating to causing the disappearance of evidence, these three ss. (201—203) are substantially the same as ss. 176, 177, 182, for the remarks on which see page 144. Sections 118, 120, which also relate to concealment of criminal acts, are directed against persons who intend to facilitate the commission of the crime.

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False personation for the purpose of any act or proceeding in a suit.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or

does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Fraudulent gain or benefit to the party charged is not an essential element in this offence. Therefore, a conviction was upheld where the 1st prisoner was charged with personating the 4th, and the 4th prisoner was charged with abetting the personation by the 1st; the facts being, that the 4th, to save himself the trouble of laying information before a Magistrate with regard to the theft of some bullocks, sent the 1st prisoner to do so, and to represent himself as being the 4th. (Ex-parte Suppakon, 1 Mad. H.C. 450.) And it has been ruled in Bengal that the offence may be committed even where the prisoner has personated a purely imaginary person. (Reg. *v.* Bhitto Kahar, Ind. Jur. 123.)

But the High Court of Madras recently declined to follow that decision, saying, "To constitute the offence of false personation under s. 205 of the Penal Code, it is not enough to show the assumption of a fictitious name. It must also, we think, appear that the assumed name was used as a means of falsely representing some other individual. The use of an assumed name without more is not an offence. It only becomes a crime when connected by proof with some other act or piece of conduct; and the gist of the offence of false personation under s. 205, we think, is the feigning to be another known person. The whole language of the section clearly imports the acting the part of another person, the actor pretending that he is that person."

"There are sections of the Penal Code under which the false assumption of appearance or character may be an offence, though no individual is meant to be represented, or only an imaginary person. Such are the ss. 140, 170, 171, & 415, but they have no application to the present case, and the last section is made applicable to personation of an imaginary person by an express enactment." (4 Mad. H.C. 18.)

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made or which he

knows to be likely to be made by a Court of Justice in a Civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as a forfeiture or in execution of a decree.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine under a sentence which has been pronounced or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made or which he knows to be likely to be made by a Court of Justice in a Civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering a decree for a sum not due.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain

a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. A has committed an offence under this section.

The three preceding sections have the effect of rendering criminal all collusive modes by which creditors, or lawful claimants, may be defeated of their just remedies. By the English Statute 13 Eliz. c. 5, such contrivances were made void as against such persons whose actions, suits, judgments, or executions were or might be in any way disturbed, hindered, delayed, or defrauded. The decisions upon this Statute may be of some use in helping to the right construction of the present clauses. The whole subject is elaborately discussed in Smith's Leading Cases, Vol. I, to which I shall principally refer.

"A person is said to do a thing fraudulently, if he does that thing with intent to fraud, but not otherwise." (s. 25, *ante* p. 20.)

The questions, fraud or no fraud, is always a question of fact, and is to be inferred, or may be negatived by the circumstances of each particular case. (1 Sm. L.C. 11—13.) One great test of fraud is to inquire whether the appearance and reality of the transaction correspond. And, therefore, where there is a conveyance which is absolute in appearance, but without any possession following upon it, or where there is merely a concurrent possession with the assignor, this will in general be deemed conclusive evidence of fraud. There must be an exclusive possession under the assignment, or else it will be fraudulent and void. (Ibid. 11, 12.)

There are two cases, however, in which the want of actual possession is no fraud. The first is where an actual delivery is impossible, as in the case of a ship at sea, goods on their way from one place to another, &c. Here a symbolical delivery, by a transfer of such documents as convey the right to the property, is sufficient. (1 Sm. L. C. 17.) The second case is, where the tenor of the deed does not require possession. For instance, in many cases of mortgage, by the express conditions of the instrument the possession of the property is not to be changed, therefore the absence of such a change is no emblem of fraud. Fraud will only be inferred when possession ought to accompany and follow the deed. (Ibid. 13.)

A conveyance will also be fraudulent where it is made voluntarily and without consideration, when the assignor is at the time insolvent, or even in such a state of debt as is likely to terminate in insolvency, provided the effect of the conveyance is in any material degree to diminish his power of meeting his liabilities. (1 Sm. L.C. 20.) Of course, such ordinary gifts as a man might make, though at the time embarrassed, without any deliberate intention of diminishing the security of his creditors, would not be criminal. But when the character of the assignment is such, that it can only be explained on the supposition of a desire to put property out of the

way of those better entitled to it, fraud would necessarily be inferred. And, so, I conceive it would be in all cases of transfer of any specific moveable property actually the subject of litigation at the time. But the act only contemplates legal liabilities, and, therefore, no transfer will be fraudulent which has merely the effect of preventing the party from complying with moral obligations, or discharging debts of honour.

It makes no difference in the fraud that the obligation which is evaded is one derived from another, provided the property transferred is legally liable to satisfy it. And, therefore, an heir or executor may be indicted under this section for collusively getting rid of property liable to the debts of his ancestor or testator. (1 Sm. L. C. 23.)

A voluntary conveyance by a man who is about to be tried for any crime, where conviction works a forfeiture, will be fraudulent. And even considerations of affection will not support the transfer, where the object is to remove the property from the effect of the sentence; as, for instance, where the conveyance by a man about to be tried for a felony was made in trust for the wife. (1 Sm. L.C. 19.) Re Saunder's estate, 32 L.J. Ch. 224; 4 Giff. 179.) But such an assignment at any time before conviction will bind the property, if made *bonâ fide* and for valuable consideration. Whitaker *v.* Wisbey, 12 C.B. 44; Chowne *v.* Baylis, 31 L.J. Ch. 757; 31 Beav. 351.) Where, however, the assignment was made by a person who, under a mistake of fact, thought he had committed a crime when he really had not, it was held that the transaction was not illegal, and a re-conveyance to himself was decreed. (Davies *v.* Otty, 34 L.J. Ch. 252.)

A conveyance will not be fraudulent merely because it deprives another of a security which he would otherwise have had, if that is not the object of the act. For instance, there will be no fraud in a sale by a debtor of his landed property for a fair and adequate consideration, though it will, of course, be much less convenient to the creditors to pursue the purchase money than the property. And it would make no difference whatever that the debtor was actually in the throes of a law suit. For he is not bound to keep his property in one form rather than another for the convenience of his creditors. And in England it has been repeatedly held that the fact of such a sale having been effected when an immediate execution was anticipated will not vitiate the sale. In one of the late cases upon the point, it appeared that a tradesman, expecting the execution of a writ issued out of the Court of Chancery for payment of costs of a suit, effected a sale of the whole of his furniture and stock in trade. The only document which passed was a receipt for the purchase money. A few days after the purchaser had taken possession a writ was issued, and a suit was brought by the Sheriff to decide whether the sale was fraudulent. Kindersley, V.C. said,

"At the present day, whatever fluctuations of opinion there may have been in the Courts of this country as to the construction of that Statute (13 Eliz. c. 5) it is not a ground for vitiating a sale that it was made with a view to defeat an intended execution on the goods of the vendor, the subject of the

sale, supposing it was in all other respects *bonâ fide*. The case of Wood *v.* Dixie, (7 Q.B. 892) has settled that at law in the most solemn manner, on a motion for a new trial. With respect to the question whether the sale was *bonâ fide*, it was at one time attempted to lay down rules that particular things were indelible badges of fraud; but in truth every case must stand upon its own footing; and the Court or Jury must consider whether, having regard to all the circumstances, the transaction was a fair one, and intended to pass the property for a good and valuable consideration." (Hale *v.* Metropolitan Saloon Omnibus Company, 28 L.J. Ch. 777; 4 Drewr. 492; Darvill *v.* Terry, 30 L.J. Ex. 355; 6 H. & N. 807; 3 Mad. H.C. 231; 5 Ibid. 368; 10 Bomb. H.C. 206.)

On the same principle it has been lately ruled in Madras, that a mere gift will, among Hindus, be valid as against creditors, if it was a genuine *bonâ fide* transaction, and not a fictitious contrivance to deceive as to the right of property. (4 Mad. H.C. 84.)

In the case of a sale it will be observed there is merely a change of one species of property for another, and the judgment-creditor may, if he can find the money, take out his execution just as he might have done against the goods. But the English law goes further, and holds that there is no fraud in an open preference by a debtor of one creditor over another, and that he may transfer his property to any creditor he chooses, even after the others have commenced their actions. (1 Sm. L.C. 18.) Accordingly, where A being indebted to B and C, after being sued to judgment by B, went to C, and voluntarily gave him a warrant of attorney to confess judgment, on which judgment was immediately entered, and execution levied on the same day on which B would have been entitled to execution, and had threatened to sue it out, it was held that the preference given by A to C was not unlawful. Lord Kenyon, C.J. said,

"There was no fraud in this case. The plaintiff (C) was preferred by his debtor (A) not with a view of any benefit to the latter, but merely to secure the payment of a just debt to the former, in which I see no illegality or injustice." (Holbird *v.* Anderson, 5 T. R. 235.)

I conceive that precisely the same construction would be put upon s. 206; the test being, whether the transfer was intended to procure any improper advantage for the debtor to the prejudice of his creditor. And this is supported by the language of s. 208, which only applies to decrees in favor of persons to whom nothing was due, or not so much. It would be no fraud to give facilities to enable a *bonâ fide* creditor to hurry a suit through to judgment and execution.

But a preference in favor of one creditor over another will be fraudulent when, under the appearance of satisfying a legal claim, the debtor really intends to put his property into the hands of a person who will keep it in trust for him and protect it from seizure.

"The law will not allow a creditor to make use of his demand to shield his debtor; and, while he leaves him in *statu quo* by forbearing to enforce the assignment, to defeat the other creditors by insisting upon it." (1 Sm. L.C. 17.)

And, so, in a case of this sort Baron Rolfe said,

"In one sense it may be considered fraudulent for a man to prefer one of his creditors to the rest, and give him a security which left his other creditors unprovided for. But that is not the sense in which the law understands the term 'fraudulent.' The law leaves it open to a debtor to make his own arrangements with his several creditors, and to pay them in such order as he thinks proper. What is meant by an instrument of this kind being fraudulent is, that the parties never intended it to have operation as a real instrument, according to its apparent character and effect." (Eveleigh *v.* Purssford, 2 M. & R. 541. And see per Lord Hardwicke, 1 Ves. Sen. 245.)

It is curious that neither the framers nor the commentators upon the Code should have seen any difficulty in these provisions. The authors of the Act (Report 1837, Note 9) dismiss them with the summary remark that "no other part of this chapter seems to require comment;" while the Commissioners (2nd Report, 1847, s. 162) devote a paragraph to criticisms upon the policy of these sections, but do not allude to the manner in which they were to be worked.

As to the Courts which may take cognizance of these offences, see Cr. P.C., s. 468, *ante* p. 168.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Dishonestly making false claim in a Court of Justice.

See Cr. P.C., s. 468, *ante* p. 168.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently obtaining a decree for a sum not due.

See Cr. P.C., s. 468, *ante* p. 168.

211. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceedings against that person, or falsely charges any person with having committed an offence (*see* s. 40, *ante* p. 25, *and note to* s. 224, *post* p. 195) knowing that there is no just or lawful ground for such proceedings or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

False charge of offence made with intent to injure.

Where a charge was preferred before an Inspector of Police, who disbelieved and refused to act upon it, an indictment under the above section was sustained. Scotland, C.J. said,

"To constitute the offence of preferring a false charge contemplated in s. 211 of the Penal Code, it is not necessary that that charge should be before a Magistrate. It is enough if it appear, as it does in the present case, that the charge was deliberately made before an officer of Police, with a view to its being brought before a Magistrate. Of course, a mere random conversation or remark would not amount to a charge. As to the other point, it is said that it must appear that the charge was fully heard and dismissed. This is not necessary. It is enough in a case like the present if it appear that the charge is not still pending. An indictment for falsely charging could not be sustained if the accusation were entertained and still remained under proper legal enquiry. Here the facts that the Inspector of Police refused to act upon the charges, and that no further step was taken, are enough to bring the case within s. 211." (Reg. *v.* Subbana Gounden, 1 Mad. H.C. 30; 1 R.C.C. Circ. 7.)

It has been laid down by the Calcutta High Court that a person cannot be convicted of abetment of a false charge, under ss. 109 & 211, solely on the ground of his having given evidence in support of such charge. The case was one referred by the Sessions Judge under s. 434 of the Crim. P.C., and in his letter of reference he made the following observations:

"After careful consideration, I hold that s. 108 does not contemplate any acts of subsequent abetment, and that the Code does not provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218 of Chap. XI of the Indian Penal Code. Many very excellent reasons could be assigned for this apparent, though not real, omission. It will, however, suffice for the purpose of this reference to point out that if the inferior and

theoretically less experienced Criminal Courts were allowed to punish as abettors persons who gave evidence in support of false charges, or rather charges found by the said Courts to be false, the provisions of the Procedure Code by which the punishment of the crime of false evidence can only be inflicted by the Sessions Court would be practically neutralised and set at nought. It is, I think, obvious that this was never intended, and that the framers of the Criminal Procedure Code, although they allowed the lower Criminal Courts to punish for false charges, never vested them with authority to punish those who supported such charges, not by previous acts but by evidence only." (9 B. Appx. 16.) The High Court simply expressed their concurrence with the Sessions Judge, and set aside the sentence.

The decision was, no doubt, right in the particular instance stated. Where there was no case whatever against the prisoners, except that they had given evidence which the Court considered to be false, it is plain that they ought to have been charged with that as a substantive offence. It is an evasion of the law to twist a primary into a secondary offence, merely for the purpose of introducing a different jurisdiction, or a lower scale of punishment. Accordingly, in the case of the Queen *v.* Boulton and others, where the evidence, if believed, established the systematic commission of unnatural offences, but the Crown had limited the indictment so as only to charge a misdemeanor, Cockburn, C.J., directed the jury to acquit. But the reasons given by the Sessions Judge, and apparently concurred in by the High Court, seem to me to be of very questionable soundness. It is quite true that assistance given to another, subsequent to and independently of the substantive offence, does not amount to an abetment of it. But if the assistance was given as part of the original scheme for committing the offence, and for the purpose of furthering or facilitating it, the case would fall under the 2nd and 3rd clauses of s. 107. For instance, the mere harbouring of a murderer is punishable under s. 212, and not as an abetment of the murder. But if it were arranged that a murder should be committed at a particular place at night, and that the prisoner should leave his house door open so that the murderer might at once slip in and so escape observation, there can be no doubt that the proper way to charge the offence would be as an abetment. So, if it were determined to crush a particular man by a false charge, and the part of the plot assigned to one or more of the conspirators was the supporting of the charge by false evidence, there can be no doubt they would be legally punishable as abettors of an offence under s. 211. Nor is there anything conclusive against this view in the fact that the charge would be cognizable by a tribunal inferior to that which could try a charge of false evidence. Suppose the person who had actually preferred the charge had himself sworn to its truth. It could not be contended that this would be a ground for quashing his conviction under s. 211. If not, there is no greater anomaly in allowing his confederates to be indicted for abetting him. There might very well happen to be difficulties in procuring a conviction for giving false evidence, which would vanish if the charge were limited to one under s. 211.

In England, in an action for a malicious prosecution, the evidence in which is the same as would be required in an indictment under s. 211, it is absolutely necessary to allege and prove that the case

terminated in favour of the complainant. Therefore, when the plaintiff was summarily convicted under a Statute which gave no right of appeal, it was held that no action would lie. (Basébé *v.* Matthews, 2 L.R.C.P. 684.) But although a conviction unreversed would of course be very strong evidence for the defendant that there was reasonable ground for making the charge, I imagine that it would not be conclusive, if it could be shown that the defendant in making the charge knew of its falsity, and brought false evidence in support of it, or kept back the evidence which might have rebutted it. (See 3 Mad. H.C. 238.)

Where it is established that the charge preferred, or the proceeding taken, was known to be wholly without foundation, the law will infer an intent to injure. (See *ante* p. 101.) And an offence will equally have been committed under this section, though the intent to injure was not the primary intention. As, for instance, where the principal object in making a false charge was to obtain a reward offered for the conviction of the offender, or to divert suspicion from the party really guilty.

The knowledge that the charge was a false one must, of course, be inferred from the circumstance of each case, but this must be judged of according to the facts as they were known, or supposed to be when the charge was made, not as they are ascertained by more complete enquiry. And, accordingly, the party accused of making a false charge will always be allowed to show the information on which he acted, and the rumours, or even suspicions, which were afloat against the person accused. Not, of course, for the purpose of establishing the guilt of the latter, but of showing the *bonâ fides* of his own conduct. (3 Bomb. H.C. Cr. 16.)

Rashness in making a charge, which is in fact believed, is not of itself indictable. (2 R.C.C.Cr. 11.) But where there is a ready and obvious mode of ascertaining the truth of the charge, as, for instance, by personal enquiry from the person on whose information the accuser acts, and the opportunity of so doing is neglected by the defendant, the absence of enquiry is an element in determining the question of the presence or absence of probable cause. What its weight may be must depend on the circumstances of each case. Therefore, where the defendant gave A into custody on a charge of felony, acting on information received from B, which was itself derived from C, and he made no enquiry himself from C, and the Judge directed the jury that on that state of circumstances there was no reasonable or probable cause, the Court of Exchequer Chamber refused to disturb the verdict on the ground of mis-direction. (Perryman *v.* Lister, 3 L.R. Ex. 197.) But the House of Lords ordered a new trial, being of opinion that the necessity for enquiry from C would depend upon the position and circumstances of the informant B, and was not in itself conclusive and necessary evidence of want of reasonable and probable cause. (4 L.R.H.L. 521.)

The mere fact of an acquittal, even for want of prosecution, is not even *primâ facie* evidence of such malice as is necessary to support an indictment under this section. (Roscoe N.P. 445, and in the P.C. 11 B.L.R. 321.)

Where a charge is really well founded, the fact that it is preferred merely to gratify personal spite, will not make it indictable. (3 N.W.P. 327.) But, where the accusation turns out to be untrue, evidence of actual malice is most important as tending to show that the charge was known to be false.

A false charge of that which is not an offence, as refusing to give a stamped receipt for money, is not indictable, as falsely charging a person with having committed an offence (1 Bomb. H.C. 92); but if done with the knowledge that there is no just or lawful ground for treating it as an offence it will be punishable under the first clause of s. 121, as the institution of a criminal proceeding with intent to injure. (5 R.C.C.C.R. 8.)

This section will not apply to a public officer who merely acts, in the course of his duty, upon information conveyed to him, even though he doubts or disbelieves it. In such a case there could be no intent to cause injury.

"It is not competent to a Session Judge, upon a mere perusal of the original proceedings, to dispose of a case of preferring a false complaint before a subordinate Magistrate; but a formal trial must be held." (Rules of Madras Sudder Court, 28th April 1862.)

See Cr. P.C. s. 468, *ante* p. 168.

Any person who is convicted of making a false charge of having committed an unnatural offence, he having been previously convicted of the same offence, may also be whipped. (Act VI of 1864, s. 4.)

The charge which the prosecutor actually intended to bring, and not that which was framed by the Magistrate upon his evidence, must form the basis of a prosecution under s. 211. If he alleges an assault and theft, he cannot be indicted for making a false charge of dacoity. (3 R.C.C.C.R. 9.) But where the facts stated by the prosecutor amount to a particular offence, and no other, and that statement is maliciously false, I do not see how his ignorance of the legal aspect of those facts can alter the character of his crime.

Harbouring an offender.

If a capital offence.

212. Whenever an offence (*see* s. 40, *ante* p. 25, *and note to* s. 224, *post* p. 195) has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished

with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If punishable with transportation for life, or with imprisonment.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

The essence of this offence consists in the intention with which the act is done. And, therefore, the bare fact of receiving and assisting an offender, if done as a mere matter of humanity to a person in distress and with no attempt to screen him from justice, will be no offence. (Arch. 10.) The object must also be to screen him from the punishment due to an offence, and, therefore, the concealment of a person who was supposed to be a runaway debtor would not be within the terms of s. 212. It would appear, too, that the offence which is supposed to have been committed must be the offence which actually has been committed. If a murderer were to induce another to conceal him, by a representation that he was pursued for a theft, I doubt very much whether any act would have been done for which the harbourer could be indicted. Certainly, if indictable he could not be punished as having concealed a murderer, for possibly if he had known the enormity of his guilt he would have surrendered the criminal at once. He could only be punished for the crime which he supposed he was committing; that crime, in fact, he never did commit, and I do not see how he could be made constructively guilty of another crime, simply because the person whom he admitted was guilty of a different offence, of which he had no knowledge.

The offence committed by the primary offender must have been actually completed, when the harbouring takes place. Accordingly, a man was acquitted who was indicted as an accessory after the fact to a murder, when it turned out that he had harboured the felon, after the injuries were inflicted, but before the death; for till death there was no murder. (Arch. 11.) But there would be no difficulty under this section in indicting the party for having harboured a person whom he knew to have voluntarily caused grievous hurt. (s. 326.) Where the person harboured has escaped from custody, or where there has been an order issued from his apprehension by a public servant, competent to issue it, any person who harbours him with knowledge of such escape or order will be indictable under s. 216, whether he knows the offence has been committed or not, and even though no offence has, in fact, been committed.

Taking gift, &c. to screen an offender from punishment.

213. Whoever accepts, or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, (*see* s. 40, *ante* p. 25, *and note to* s. 224, *post* p. 195) or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall,

If a capital offence.

if the offence is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If punishable with transportation for life, or with imprisonment.

Offering gift or restoration of property in consideration of screening offender.

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, (*see* s. 40, *ante* p. 25, *and note to* s. 224, *post* p. 195) or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If a capital offence.

If punishable with transportation for life, or with imprisonment.

Exception.—The provisions of Sections 213 and 214 do not extend to any case in which the offence consists only of an act irrespective of the intention of the offender, and for which act the person injured may bring a civil action.

Illustrations.

(*a*) A assaults B with intent to commit murder. Here, as the offence does not consist of the assault only, irrespective of the intention to commit murder, it does not fall within the exception, and cannot therefore be compounded.

(*b*) A assaults B. Here, as the offence consists simply of the act, irrespective of the intention of the offender, and as B may have a civil action for the assault, it is within the exception and may be compounded.

(*c*) A commits the offence of bigamy. Here, as the offence is not the subject of a civil action, it cannot be compounded.

(*d*) B commits the offence of adultery with a married woman. The offence may be compounded.

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Taking gift to help to recover stolen property, &c.

The offence constituted by ss. 213 & 214, consists in the corrupt motive which is brought into play as much as in the delay to criminal justice; therefore, the mere concealing an offence or not bringing an offender to punishment will be no offence under these sections, unless such conduct proceeds from some "gratification" obtained or aimed at. The word "gratification" it will be remembered is not restricted to pecuniary gratification, or to gratifications estimable in money. Nor does it seem to be absolutely necessary that the person to be screened should have been guilty of any offence, or even that any offence should have been committed, if the facts upon which a charge ought to be brought forward are suppressed upon any corrupt consideration. For instance, suppose a man is found with his throat cut, and it comes to the knowledge of any person that one of the inmates of the house has been seen with bloody clothes, and that part of the property of the deceased was in his possession immediately afterwards, if the person possessed of this knowledge were to offer to keep it secret if a sum of money were offered him, I conceive he would be guilty of the offence of attempting to obtain a gratification in consideration of his not proceeding against that other for the purpose of bringing him to legal punishment, even though it should turn out that the deceased had really committed suicide. It seems to me that the question would be, whether facts which entailed a reasonable suspicion of guilt were knowingly suppressed, and their suppression turned into a source of illicit gain. (See R. *v.* Best, 2 Mood. C.C. 124; R. *v.* Gotley, Russ. & R. 84.)

It would also appear that the offence is completed when the corrupt consideration is accepted, or even when there is an attempt to obtain, or an agreement to accept it. If this be so, the fact that the very same person afterwards did prosecute even to conviction would not purge the offence. It was otherwise under the old law as to compounding felonies. There, the offence consisted, not in taking the money, but in letting the delinquent escape. Accordingly, where upon an indictment for compounding a felony it appeared that the felon had actually been prosecuted to conviction by the defendant, an acquittal was directed. (R. *v.* Stone, 4 C. & P. 379.)

The exception annexed to s. 214 is not so clear as might be wished. It can seldom be said of any act that it is an offence irrespective of the intention of the offender. To take the case of an assault which is employed in the illustration. The very definition of the term in s. 351 makes the offence depend upon the intention.

Perhaps the Code refers to that special intention which goes beyond the act itself and forms an aggravation of it, and therefore, requires to be substantially proved; as distinct from that intention which is necessarily or naturally inferred from the act, and which therefore, requires no proof beyond that which establishes the act. For instance, if a man raises a whip over another, or strikes him with it, *primâ facie*, the act imports that intention which makes it an assault or criminal force. (ss. 350 & 351.) The intention may be negatived as, for instance, by showing that the act was done in jest, but this lies upon the defendant. But if a man presents a gun at another, and it is alleged that this was an assault with intent to commit murder, here the act itself raises the inference that it was intended to cause apprehension of violence—that is, it makes the offence of assault complete. But if it is asserted that the person who aimed the gun actually intended to draw the trigger, this is an additional intention which requires additional proof.

This seems to have been the view taken by the Bombay High Court in a recent case, when the question was whether a charge of causing grievous hurt could be compounded. The Court said,

"The words 'irrespective of the intention' seem to mean that the definition of the offence extends only to acts, not to a particular intention prompting or accompanying the acts. Thus the several instances of negligence constituting an offence without a positively mischievous purpose, are cases in which the "offence consists only of an act." No intention is, or needs be, imputed as an element of the offence. In other cases the act —— as, for instance, waging war against the Queen, or committing adultery —— though it may be essentially voluntary, is still conceived, for the purpose of the definition or of the imposition of punishment, simply as an act. If the act, as thus viewed by the Legislature, is done, the offence is committed, and the penalty is incurred "irrespective of the intention of the offender." In all cases of this kind for which the Indian Penal Code provides, the act is either one, as negligently allowing a prisoner charged with, or convicted of, an offence to escape, for which no civil action could be brought, and on that ground excluded from the operation of the exception; or else, as in the case of adultery, of a kind regarded as of a specially personal character, so that the public peace and welfare will be rather furthered than impaired by allowing a private settlement of the wrong."

"In contrast to these cases stand the great mass of offences which arise in the ordinary course of affairs. In the definitions or descriptions of these in the Penal Code the intention is an essential element. The mere act, not possibly in itself, but as viewed by the Legislature, is regarded as possibly ambiguous, and is not an "offence irrespective of the intention of the offender," according to a distinction well expressed by Lord Mansfield, C.J. in the case of R. *v.* Shipley, (4 Dougl. 165.) Thus, in cases of theft, personal violence, threats, and defamation, the physical act must spring from a dishonest or malicious intent in order to constitute an offence. This was the class of cases which probably was most conspicuous to the Legislature when the exception to s. 214 was made law. The offences are of a kind regarded as highly dangerous to society, and not, therefore, proper subjects of compromise. As their definitions involve intention, they were excluded from the exception by limiting it to cases of offences constituted by acts "irrespective of the intention of the offender." The result appears to be, that whenever the words 'voluntarily,' 'intentionally,' 'fraudulently,' 'dishonestly,' or others, whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence, not being one "irrespective of the intention" is not one which the exception to s. 214 of the Indian Penal Code by itself allows to be compounded without the parties incurring the penalties prescribed by that and the next preceding section. The offence, to admit of compromise, must be one in this sense irrespective of the intention; and it must be one for which a civil action may be brought at the option of the person injured, instead of criminal proceedings." (1 Bomb. L.R. 147, 153.)

Hence cases of wrongful restraint (3 R.C.C.S.C. 14,) and of kidnapping (22 W.R. Cr. 26) may be compounded. But not house-trespass (4 R.J. & P. 171,) nor enticing away a married woman with intent to commit adultery with her, nor criminal breach of trust (1 Mad. L.R. 191,) nor voluntarily causing hurt or grievous hurt (6 N.W.P. 302; 1 Bomb. L.R. 147, 157, over-ruling 10 Bomb. H.C. 68) nor criminal misappropriation (7 Mad. H.C. Rul. 34), nor cheating, nor defamation (1 Bomb. L.R. 158 note), nor house-breaking in order to commit theft. (1 Bomb. L.R. 64.)

Under s. 210 of the Crim. P.C. a complaint brought under Chap. XVI of that Code, viz., of a charge triable by a magistrate, and punishable under the Indian Penal Code with imprisonment not exceeding six months (s. 148), may be withdrawn by leave of the magistrate at any time before final order. No withdrawal can take place under this section where the offence is punishable with a heavier penalty, *e.g.*, house-trespass. (4 R.J. & P. 171; 4 B.F.B. 41.) Nor after a committal by the magistrate. (4 R.J. & P. 365.) Where, however, after a committal for adultery the husband formally withdrew his charge before the Sessions Judge, but the latter refused to allow the withdrawal and went on with the case and sentenced the defendant, the High Court of Bengal held that the withdrawal ought to have been allowed. (1 R.C.C.C.R. 3 Circ. 3.) It is clear that in such a case there could be no withdrawal under s. 210. What I understand the Court to have meant was merely that the Judge, in the exercise of his discretion, ought to have allowed the husband to refrain from offering any evidence, in which case the accused would have been entitled to an acquittal, and not merely to a withdrawal of the charge. And this course has in more recent cases been held to be the proper one. (5 R.C.C. Circ. 5; 5 Bomb. H.C. Cr. 27; 1 Bomb. L.R. 64.)

The public prosecutor may also, with the consent of the Court,

withdraw any charge which he is prosecuting against any person. (Cr. P.C., s. 61.)

Under the High Court Crim. P.C., s. 151, it is provided that "in the case of offences which may lawfully be compounded, injured persons may compound the offence out of Court, or in Court with the permission of the Court. Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person."

It is obvious that withdrawing and compounding a charge are two very different things. Many a charge might be withdrawn under s. 210 of the Crim. P.C. which could not be compounded under s. 214 of the Penal Code, and *vice versâ*. See as to compounding offences in or out of Court, s. 188 of the Cr. P.C.

It has been ruled by the High Court of Bengal that the doctrine of English law by which the right of a civil action is suspended until criminal proceedings have been taken, where an act which causes a civil injury is also a felony, has no application in India. (2 R.C.C. S.C. 12.) The practical effect of the rule itself, even in England, has been very much reduced by two recent cases. (Wells *v.* Abraham, 7 L.R.Q.B. 554; Osborn *v.* Gillett, 8 L.R. Ex. 88.)

Section 215 only applies to persons who receive money for the purpose of helping another to recover property which has been unlawfully taken, but of course any one who instigates such an offence will be punishable as an abettor. Great caution will, therefore, be necessary in offering rewards for the recovery of stolen property. Under 9 Geo. IV, c. 74, s. 112 it is made an offence to publish any advertisement for the return of property where any words are used purporting that no questions will be asked, or that a reward will be paid without seizing or making an inquiry after the person producing such property. The spirit of this act will probably guide the Courts if any indictment is preferred for the offence of advertising or offering rewards. Every such advertisement should stipulate for such information as may lead to the apprehension of the criminal.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered.

216. Whenever any person convicted of or charged with an offence, (*see* s. 40, *ante* p. 25, *and note to* s. 224, *post* p. 195) being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being

apprehended, shall be punished in the manner following, that is to say, if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

If a capital offence.

If punishable with transportation for life, or with imprisonment.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

217. Whoever being a public servant knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture.

The direction of law here referred to means some express direction, such as is contained in the Crim. P.C., ss. 89, 90. It does not extend to the general obligation not to stifle a criminal charge, which is common to all subjects. (1 Mad. L.R. 266.)

Public servant framing an incorrect record or writing with intent to save person from punishment or property from forfeiture.

218. Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause or knowing it to be likely that he will thereby cause loss or injury to the public or to any person, or with intent thereby to save or knowing it to be likely that he will thereby save any person from legal punishment, or with intent to save or knowing that he is likely thereby to save any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

See the remarks upon this section, *ante* p. 136. A man who intentionally read out false abstracts of papers to a person who was preparing a record, in consequence of which the latter innocently produced what was a false record, was held not to have committed an offence under this section, but to be properly indictable for abetting such an offence. (7 N.W.P. 134.)

Public servant in a judicial proceeding corruptly making an order, report, &c., which he knows to be contrary to law.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a Judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

As to the phrase "Judicial proceeding," see *ante* p. 166.

Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence (*see* s. 40, *ante* p. 25), intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Punishment.

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable by death ; or

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years ; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with imprisonment for a term less than ten years.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for an offence (*see* s. 40, *ante* p. 25) or lawfully committed to custody, (*Act* XXVII of 1870, s. 8) intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Punishment.

With transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

With imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who

ought to have been apprehended, is subject by a sentence of a Court of Justice to imprisonment for a term not exceeding ten years, or if the person was lawfully committed to custody. (*Act* XXVII of 1870, s. 8.)

223. Whoever being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence, (*see* s. 40, *ante* p. 25) or lawfully committed to custody, (*see Act* XXVII of 1870, s. 8) negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Escape from confinement negligently suffered by public servant.

Convict warders are public servants within the meaning of this section. (3 R.C.C.C.R. 35.)

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence (*see* s. 40, *ante* p. 25) with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

The escape which is punishable under this section is escape from custody for an offence. Escape from custody under civil process is not punishable. (6 Bomb. C.C. 15.)

Act IV of 1867, followed by Act XXVII of 1870, (see s. 40, *ante* p. 25,) has cleared away a good many difficulties which attended these ss. 221—225. It extends the meaning of the word offence to anything made punishable by a special or local law, and renders escape from custody for default of giving security under Chap. XXXVIII of the Crim. P.C. punishable with one year's imprisonment, or fine, or both. (s. 225A, *post* p. 198.) The introduction of the words "lawfully committed to custody" in ss. 222 & 223 also meets the case of persons arrested on suspicion, *e.g.*, under Cr. P.C., s. 94, though not actually charged with any specific offence. (See 1 R.C.C. Circ. 26.) But a person who has been acquitted of a charge on the ground of insanity, and confined in jail under the order of Government, is not punishable under s. 224 if he escapes from custody, even though he is sane when he does so. (Pro. Mad. H.C. 25th Nov. 1862.) And this is still the law, though a jailer who connived at his escape would now be punishable under s. 223, since, though not convicted of any offence, the person who escaped was lawfully committed to custody.

One contingency, however, has been overlooked in framing both these acts, and that is the possibility of persons in India being chargeable only with offences punishable under the law of England. For instance, if a British sailor committed a murder on the high seas, when he reached Madras he would be punishable by the High Court for murder under the law of England. (See *ante* p. 9.) But inasmuch as this is not anything made punishable by the Code, (s. 40, *ante* p. 25,) or by any special or local law as therein defined, (ss. 41 & 42,) a public servant could not be indicted under s. 221 for omitting to apprehend him, nor could he, or any friend of his, be indicted under s. 224 or 225 for resisting apprehension, nor could he be indicted under s. 216 for escaping from custody, nor could any one be convicted under that section for harbouring him. But if he were once apprehended any public servant who intentionally suffered him to escape would be punishable under s. 222 as amended by Act XXVII of 1870, s. 8, for then the prisoner would have been "lawfully committed to custody."

A charge of having escaped from custody may be enquired into and tried where the person charged happens to be when the charge is made. (Cr. P.C., s. 67., *illus.*) *(d)*

Any sentence passed on an escaped convict, either for the escape or for any other offence, may be ordered to take effect immediately, or at the expiration of the period of his former sentence. (Cr. P.C., s. 316. See Act X of 1875, s. 110.)

Resistance or obstruction to the lawful apprehension of another person.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence (*see* s. 40, *ante* p. 25), or rescues or attempts to rescue any other person from any custody in

which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment.

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under the sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

225A. Whoever escapes or attempts to escape from any custody in which he is lawfully detained for failing, under the Code of Criminal Procedure, to furnish security for good behaviour, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. (Act XXVII of 1870, s. 9.)

Escape from custody for failing to furnish security.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Unlawful return from transportation.

To constitute this offence it is essential that the convict should actually have been sent to a penal Settlement, and have returned before his sentence had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation, it was held that he had committed an offence punishable under s. 224, not under s. 226. (4 Mad. H.C. 152.)

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment then with so much of that punishment as he has not already suffered.

Violation of condition of remission of punishment.

228. Whoever intentionally offers any insult or causes any interruption to any public servant while such public servant is sitting in any stage of a Judicial proceeding, shall be punished with simple imprisonment for a term which may

Intentional insults or interruption to a public servant sitting in any stage of a Judicial proceeding.

extend to six months, or with fine which may extend to one thousand Rupees, or with both.

See Cr. P.C., s. 436, *ante* p. 145.

The proceeding under s. 436 of the Cr. P.C. when resulting in a punishment under the above section is a "conviction upon trial" within the meaning of the Cr. P.C., s. 271, against which an appeal lies. (4 Mad. H.C. 146.) See too In re Pollard, 2 L.R.P.C. 106.

Persons who are guilty of gross prevarication in giving evidence before a Court of Justice, or of refusing or neglecting to return direct answers to questions, may be punished under this section, if their conduct amounts to an intentional interruption. (10 Bomb. H.C. 69, explaining 4 Bomb. H.C. 6—7.)

To leave the Court when ordered to remain, or to make signs from outside to a prisoner on his trial, have been held not to be offences under this section. (Mad. H.C. Rul. 17th Jan. 1870; 21st Oct. 1870.)

Personation of a juror or assessor.

229. Whoever by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn, or, knowing himself to have been so returned, empanelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

See as to the persons disqualified to serve as Jurors or Assessors. (Cr. P.C., s. 405.)

"Pleaders are not incapable of serving as Assessors or Jurors, but it is inexpedient that their names should be included in the collector's list of persons qualified to serve in those capacities if a sufficient number of other persons are available." (Rules of Madras Sudder Court, 28th April, 1862.)

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

'Coin' defined.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign power in order to be so used. (Act X of 1872.)

Queen's Coin.

Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, is the Queen's coin.

Illustrations.

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Medals are not coin, inasmuch as they are not intended to be used as money.

(*d*) The coin denominated as the Company's Rupee is the Queen's coin.

Counterfeiting Coin.

231. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

The word "counterfeit" as used in this Code is defined by s. 28 to involve an intention by means of that resemblance to practice deception, or a knowledge that it is likely that deception will thereby be practised. And such an intention or knowledge will always be inferred from the mere fact of counterfeiting unless under circumstances which conclusively negative it. Such circumstances must be so rare that it is unnecessary to imagine instances.

The same definition provides that it is not essential to counterfeiting that the imitation should be exact. And this provision is, of course, peculiarly necessary in this country, where the ignorance of the people might enable even a clumsy imitation to prove successful, while the low state of coining science renders it probable that no counterfeit will be minutely accurate. Accordingly, a trifling variation from the real coin in the inscription, effigies, or arms was held under the corresponding English Statute not to remove the offence out of the Statute. (See Reg. *v.* Robinson, 34 L.J.M.C. 176.) And so it was held in another case, where the ingenious device was adopted of making coins without any impression whatever, in imitation of the smooth worn money then in circulation. (Arch. 641-2.) But it will still be necessary to show that the article produced or partly produced was a counterfeit; that is, that it was such a resemblance as might be received as the coin for which it was intended to pass, by persons using the caution customary in taking money. This caution, of course, will vary according to the class of persons among whom it may be supposed that it was intended to pass. Accordingly, where the prisoner had counterfeited the resemblance of a half-guinea upon a piece of gold previously hammered, but it was not round, nor would it pass in the condition in which it then was, the Judges held the offence to be incomplete. (Arch. 641.) Nor is a mere medal counterfeit coin, though fraudulently represented to an ignorant person as being money. (Rulings of Mad. H.C. 1864 on s. 240.)

The absence of apparent resemblance may possibly arise merely from the process being imperfectly carried out. If that be so, there will still be an offence under this section. And even if the metal in which the counterfeit was made was completely different from that of the coin represented, it would still be a question of fact whether this difference did not arise merely from the manufacture having been interrupted in an early stage. (Mad. H.C. Rul., 17th Nov. 1863.) Copper or lead may be washed over so as afterwards to bear a sufficiently strong resemblance to silver or gold. But I conceive that no conviction could be supported where it was plain that the thing actually made was never intended to result in a coin, but was merely an experiment as a step towards future productive efforts.

It is seldom possible, and never necessary, to show that the defendant has been caught in the act of counterfeiting. The act will generally have to be inferred, from such evidence as the possession of tools, dies, or metal necessary for the purpose; or from finding some coins finished, and others unfinished, or different coins in a different state of completion. (Arch. 641.) The mere possession of counterfeit coin by a person who has had nothing to do with its manufacture may be an offence under subsequent ss. (237—243), but is not punishable under s. 231.

The offence constituted by this section consists in the fact of the counterfeiting. It is not necessary to show that the coins were uttered, or that there was any attempt to utter them. (Arch. 642.)

Counterfeiting the Queen's coin.

232. Whoever counterfeits or knowingly performs any part of the process of counterfeiting the Queen's coin shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

This and similar sections must be taken as subject to ss. 76 & 79, which prevent an act being criminal if done by a person who is, or supposes himself to be justified in the act. Therefore, if a die-sinker were to be applied to for the purpose of making coining moulds, and were in concert with the police to proceed with the task for the purpose of bringing the coiners to detection, this would not be a criminal act. (Arch. 655.) And so possession of coining tools, or counterfeit coin by a person entitled to retain them, as for instance a policeman, is no offence.

Making or selling instrument for counterfeiting Queen's coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Coining instruments or materials will be in a man's possession when they are in any box or place which is under his control, and whether they are used for his benefit or not, provided it is shown that he is aware of their existence and character. And the same article may be in the possession of several persons, if they are acting in concert, and each of them have a guilty knowledge of the character and existence of the thing in question.

In one case, a prisoner named Weeks was indicted with four others for having unlawfully in their custody and possession a coining mould. It appeared that the police entered the prisoner's house in his absence and there found the other prisoners, two of whom attacked the police, while the two others, one of whom was the wife of Weeks, snatched up something from the table and threw it into the fire. This was found to be the coining mould which formed the subject of the indictment. Other implements and materials suitable for making moulds were found in other parts of the house. The prisoner came back to the house after the capture was made. It was proved that he had passed off a bad half-crown thirteen days before. The Jury found Weeks guilty, and the Court affirmed the conviction, saying,

"We are all of opinion that there was sufficient evidence to be left to the Jury on the charge of felony. In order to prove the guilty knowledge, evidence was admissible of other substantive felonies committed by the prisoner." (Reg. *v.* Weeks, 30 L.J.M.C. 141; L. & C. 18.)

The "other substantive felonies" which are admissible to prove guilty knowledge, must have course be crimes of a similar character (see Indian Evidence Act, 1872, s. 15), and not too remote in point of time. The fact that a man has committed a robbery is no proof that he is a coiner, though the fact that he has passed off a leaden rupee a few days previously would be. Nor would the circumstance that a man had passed off a false rupee a year ago be any evidence that another now found in his possession was known to be counterfeit. For any man through whose hands money passes might meet with such accidents at such distances of time.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Abetting in India the counterfeiting out of India of coin.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeit coin.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Import or export of counterfeit of the Queen's coin.

239. Whoever, having any counterfeit coin which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin, possessed with the knowledge that it is counterfeit.

This section has been held only to apply to a person other than the coiner. Therefore when the coiner had himself passed off the false coin, the conviction was quashed. (3 N.W.P. 150.)

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which at the time when he became possessed of it he knew to be a counterfeit of the Queen's coin, fraudulently,

Delivery of Queen's coin, possessed with the knowledge that it is counterfeit.

or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

Illustration.

A, a coiner, delivers counterfeit Company's Rupees to his accomplice B, for the purpose of uttering them. B sells the Rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the Rupees for goods to D, who receives them not knowing them to be counterfeit. D, after receiving the Rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under ss. 239 or 240 as the case may be.

No offence is committed under this section where the coin is not delivered as genuine. For instance, when it was handed over to a friend, in order to avoid its being discovered by the Police in the possession of the prisoner. (4 N.W.P. 62.)

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

There are three classes of offences created by ss. 239—243. First, passing off coin known from the first to be counterfeit. Secondly, passing off such coin which was for the first time discovered to be counterfeit after its receipt. Thirdly, being in wrongful possession of coin known all along to have been counterfeit. Further subdivisions of classes first and third arise, according as the counterfeit coin is the Queen's or otherwise.

Guilty knowledge is generally a matter of circumstantial evidence. The possession of other pieces of base coin, whether of the same or a different description, or the fact that base coin has been passed off by the same defendant at other times, either before or after the offence charged in the indictment, will be evidence of such a guilty knowledge. (Arch. 493, 650.) And so it would be where the facts of the case showed a desire for concealment; as, for instance, if it were shown that the defendant had employed a third person to make a purchase for him, without any apparent cause.

If coin is delivered to a person for the purpose of fraud, it is unnecessary to show that there was an intention to defraud the person to whom they are delivered. And even if the intention were negatived, the offence would still be the same. For instance, an offence would be committed under ss. 239 & 240 if it were delivered to an accomplice or an innocent person for the purpose of being passed off at once. Nor is it necessary that there should be any legal obligation to pay the person upon whom the money was passed off. Hence the giving of a counterfeit coin to a woman as the price of connection with her was held to be indictable. (Arch. 650.) And the offence is complete, even though the person to whom the coin was tendered refused to receive it. (Ibid.)

The mere possession of counterfeit coin is an offence under ss. 242 & 243, even though no attempt is made to pass it off, provided it can be shown that it was kept for a fraudulent purpose, and was originally obtained with a guilty knowledge. The mere fact of a single base coin being found in a party's possession would not, without further evidence, be sufficient to create a presumption that he knew it to be counterfeit when he obtained it, and intended to make a fraudulent use of it. But where a considerable number of

base coins is found in any man's possession the presumption of guilt would be sufficient to make a conviction lawful, unless the possession could in some manner be explained or accounted for.

A coin will be in a man's possession when it is in any box or place which is under his control, and whether it is used for his benefit or not, provided it is shown that he is aware of its existence and character. And the same article may be in the possession of several persons, if they are acting in concert, and each of them have a guilty knowledge of the existence and character of the thing in question. (Arch. 653, *ante* p. 203.)

Person employed in a mint causing coin to be of a different weight or composition from that fixed by law.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking from a mint any coining instrument.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Where a person is known to be intending to commit a crime, as, for instance, to take coining tools out of a mint under this section, if the authorities, knowing of this intention, allow him to carry out his criminal purpose for the purpose of ensuring his detection, this does not amount to such a lawful authority as will justify the prisoner. (Reg. *v.* Harvey, 1 L.R.C.C. 284.)

Fraudulently or dishonestly diminishing the weight or altering the composition of any coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing the weight or altering the composition of the Queen's coin.

248. Whoever performs on any coin any operation which alters the appearance of the coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of any coin with intent that it shall pass as a coin of different description.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.

250. Whoever, having coin in his possession with respect to which the offence defined in Sections 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed delivers

Delivery to another of coin possessed with the knowledge that it is altered.

such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin possessed with the knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in Sections 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of altered coin by a person who knew it to be altered when he became possessed thereof.

252. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been

committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in Sections 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Counterfeiting a Government stamp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Having possession of an instru-

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having rea-

ment or material for the purpose of counterfeiting a Government stamp.

son to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for the purpose of counterfeiting a Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of a counterfeit Government stamp.

260. Whoever uses as genuine any stamp knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Using as genuine a Government stamp known to be counterfeit.

261. Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Effacing any writing from a substance bearing a Government stamp, or removing from a document stamp used for it, with intent to cause loss to Government.

The intention with which the acts named in the above section are done may be either fraudulent generally, or with a special view to cause loss to Government. And, therefore, a conviction would be good where the intention of the act was merely to efface a document with a view injuriously to effect the rights of another person. No intention to cause loss to Government can be assumed unless it is shown, or may be inferred, that the intention of the party was to use the stamp as a stamp a second time. And, therefore, no conviction could be supported, if the object of removing writing from a stamped paper was merely to write upon the blank space something which required no stamp.

262. Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Using a Government stamp known to have been before used.

263. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false instrument for weighing.

The instrument used must not only be known to be false, but must also be fraudulently so used; that is, it must be used for the purpose of passing off short weight upon persons who are entitled to full weight.

In general the mere possession of a false balance, which is used as a true one, will be sufficient evidence of a fraudulent intention. "The intention, however, must be alleged in laying the charge, though it may be a matter of inference only, from the fact of the possession, and the attending circumstances as manifesting the purpose, and the inference may of course be rebutted. But where the incorrectness of the scale is visible, and there is no attempt to cover or conceal it, there can

be no ground for imputing fraud from the defect alone; the circumstances negative the intention of fraud, and no charge would lie against the party using such a balance." (2nd Report, 1847, ss. 220 & 221.)

See as to the summary jurisdiction of the Magistrate of the District over offences defined by this section, and ss. 265 & 266, Crim. P.C., s. 222.

Fraudulent use of false weight or measure.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weights or measures.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making or selling false weights or measures.

267. Whoever makes, sells, or disposes of, any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

268. A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

Public nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

Nuisances are of two sorts—Public and Private. Those which only affect individuals cannot be made the subject of an indictment, but may be the ground of a Civil action for damages. Accordingly,

"Where upon an indictment against a tinman for the noise made by him in carrying on his trade, it appeared in evidence, that the noise only affected the inhabitants of three sets of chambers in Clifford's Inn, and that by shutting the windows the noise was in a great measure prevented, it was ruled by Lord Ellenborough, C.J., that the indictment could not be sustained, as the annoyance was, if anything, a private nuisance." (1 Russ. 436.)

On the other hand a public nuisance, which affects all equally, can only be the subject of an indictment, for otherwise a party might be ruined by a million suits (1 Russ. 435; Winterbottom *v.* Derby, 2 L.R. Ex. 3, 16); but even then a private individual may sue for any especial damage he has suffered. For instance, a man may be indicted for digging a hole in a high road, and sued by a party who has fallen into it and broken his leg. (Ibid.)

In general it may be laid down, that anything which seriously affects the health, comfort, safety, or morals of the community may be indicted as a public nuisance. For instance, keeping filth upon premises, (Atty.-Genl. *v.* Bradford Canal, 2 L.R. Eq. 71; Benjamin *v.* Storr, 9 L.R.C.P. 400) or exercising offensive trades which destroy the purity of the air; keeping a savage bull in a field through which there is a footway; keeping ferocious dogs unmuzzled; bringing a horse diseased with glanders into a public place to the danger of infecting the Queen's subject; exposing a child infected with small-pox in the public streets (1 Russ. 435; Arch. 768); keeping gun-powder, naphtha, or similar inflammable substances in such large quantities as to be dangerous to life and property. (Hepburn *v.* Lor-

dan, 34 L.J. Ch. 293; Reg. *v.* Lister, 26 L.J.M.C. 196; D. & B. 209. See as to gunpowder, Act XVIII of 1841, s. 2, and Act XXVIII of 1857, s. 7); keeping brothels (see Reg. *v.* Stannard, 33 L.J.M.C. 61; L. & C. 349; Reg. *v.* Rice, 1 L.R.C.C. 21); and common gambling houses (1 Russ. 443; 7 Bomb. C.C. 74); brick-burning when carried on in such a manner as to be generally noxious or offensive to the neighbourhood. (Bamford *v.* Turnley, 31 L.J.Q.B. 286; 3 B. & S. 62; Wanstead *v.* Hill, 32 L.J.M.C. 135; 13 C.B.N.S. 479.)

It has been ruled that where a noxious trade or other nuisance is established at such a distance as to be inoffensive to any one, and afterwards persons choose to build houses or make roads near it, no indictment can be brought, for the trade, &c., was legal before the building of the house or construction of the road. (12 Mod. 349; R. *v.* Cross, 2 C. & P. 483.) But this position is doubted in Archbold (769), and denied in various cases cited 1 Russ. 455—6, and I would submit with justice. Otherwise, the result would be, that a party, by doing that which could not be prevented at the time, might maintain a desert around him for ever, to the injury of public and private interests. The doctrine has also been expressly denied in the case of a civil action by an individual, which would have been a stronger case for exemption. (Elliotson *v.* Feetham, 2 Bing. N.C. 134; Bliss *v.* Hall, 4 Ibid. 183.) Under s. 268 the only question would be, whether the act done was in fact injurious or annoying to the public. But where a highway is dedicated to the public, with an obstruction upon it, which would be a nuisance if subsequently erected, the public must take the road with its accompanying inconvenience, and there is no remedy at law. (Fisher *v.* Prowes, 31 L.J.Q.B. 212; 2 B. & S. 770, and see Robbins *v.* Jones, 33 L.J.C.P. 1; 15 C.B.N.S. 221; Mercer *v.* Woodgate, 5 L.R.Q.B. 26; Arnold *v.* Blaker, 6 Ibid. 433.) In such a case, the act done did not, when it was done, cause any injury to the public who had no right over the ground.

Nor is a party allowed to say, that the smells, &c., were so bad before he came there, that he has added nothing perceptible to the annoyance. Where such a defence was set up, Abbott, C.J. said,

"It is not necessary that a public nuisance should be injurious to health; if there be smells offensive to the senses that is enough, as the neighbourhood has a right to fresh and pure air. It has been proved that a number of other offensive trades are carried on near this place, but the presence of other nuisances will not justify any one of them; or the more nuisances there were, the more fixed they would be. However, one is not the less subject to prosecution, because others are culpable." (1 Russ. 437; Crossley *v.* Lightowler, 3 L.R. Eq. 279; Crump *v.* Lambert, Ibid. 409; see also s. 278.)

Nor is a party allowed to plead a sort of set-off, and to show that however undoubted a nuisance he may be to some, he is conferring a more than proportionate benefit upon the entire community; for, as the Court of Queen's Bench observed in such a case,

"No greater evil can be conceived than the encouragement of capitalists and adventurers to interfere with known public rights, from motives of personal interest, on the speculation that the changes made may be rendered lawful, by ultimately being thought to supply the public with something better than what they actually enjoy." (Rex *v.* Ward, 4 A. & E. 404; Stockport Water Works Co. *v.* Potter, 31 L.J. Ex. 9; 7 H. & N. 160; Spokes *v.* Banbury, 1 L.R. Eq. 42.)

Nor is it a defence that the act is in itself a lawful one, and that it was done upon the defendant's own land, and in a convenient place for the purpose, if in fact it amounts to a nuisance. (Cavey *v.* Lidbetter, 32 L.J.C.P. 104; 13 C.B.N.S., s. 470; 10 B.L.R. 241.)

Nor, finally, can any length of time be held to justify a nuisance, for the lapse of ages cannot authorize a man to poison his fellow-subjects. (1 Russ. 431, 456; Stockport Water Works Co. *v.* Potter, ub. sup. 7 B.L.R. 499.)

Sometimes the Legislature authorizes an act which would otherwise be a nuisance. In such cases, of course, no indictment will lie. But an injury caused by an excess of the statutory power, or by its negligent exercise, will still be punishable. (Reg. *v.* Bradford Nav. Co., 34 L.J.Q.B. 191; 6 B. & S. 631; Atty.-Gen. *v.* Leeds, 5 L.R. Ch. 583.)

And if the Legislature merely gives general authority to do an act which may be done without being a nuisance, that is no justification for doing it so as to be a nuisance. For instance, authority to erect workshops is not an authority for placing them where they will be an injury to others. (10 B.L.R. 241; Oliver *v.* N.E. Ry. Co., 9 L.R.Q.B. 409. Atty.-Gen. *v.* Gaslight Co., 7 Ch. D. 217.)

Powers of directing the removal of nuisances, and of imposing summary penalties for disobedience to such orders, are also given by Act XIV of 1856, for the conservancy and improvement of the Presidency Towns, and the special local acts, and by the Cr. P.C., ss. 518, 521.

All offences under this chapter, except those specified in ss. 280 & 281, may be disposed of summarily by a Magistrate of Police of Calcutta, and punished in the manner provided by the Penal Code. But he cannot inflict imprisonment exceeding six months, or fine exceeding two hundred Rupees, or both. And he may commit to the High Court if he thinks fit. (Act XXI of 1864, s. 1, extended to Madras under s. 6, by order of Government, June 21, 1864.)

Nuisances punishable unde the Penal Code may still be made the subject of civil action, before or without prosecution. (1 Bomb. H.C. 2.)

Negligent act likely to spread infection of any disease dangerous to life.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Under this section it will be possible to arrest and punish persons who go about under the influence of infectious disorders for the purpose of exciting public commiseration. A more valuable application of the same section would be to employ it in the checking of a disease as loathsome as it is dangerous, which springs from promiscuous prostitution. The act of inoculation, if done *bonâ fide* as a preventive against small-pox, would not be punishable under this section. See ss. 81 & 87 to 99. (Mad. H.C. Rul., 10th July 1867.)

Malignant act likely to spread infection of any disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disobedience to a quarantine rule.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Act I of 1870 provides for the promulgation by the Government of India and the Local Government of quarantine rules, which are to be published, and taken as rules made and promulgated under s. 271.

Adulteration of food or drink which is intended for sale.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term

which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Sale of noxious food or drink.

The adulteration mentioned in the two preceding sections must be such as renders it injurious to health. Mixing water with milk, sloe leaves with tea, or chicory with coffee would not be punishable. It would be otherwise with such compounds as beer doctored with strychnine, spirits mixed with vitriol, cakes coated with red lead, and such like poisonous compounds. Where the person charged is himself the party who has directed the adulteration, the fact that the article has been sold, or was manufactured for sale, will be sufficient to warrant a conviction. On the other hand, where the party is merely the vendor of that which has been manufactured by others, some further evidence will be necessary, in order to show that he knew not only that there was some adulteration, but also what was the extent and probable consequence of that adulteration. It must be remembered that in most cases there are some recognized modes of adulterating particular articles of food, which are perfectly well known to the trade, and, therefore, where it is shown that the vendor knew that the article was in fact adulterated, it will in most cases be no very unsafe presumption that he had reason to know what the character of the adulteration was. The knowledge of the adulteration will seldom be capable of direct proof. Where the article is in fact adulterated, and where it is shown that the vendor purchased it at a price below that for which the genuine article could be procured, such knowledge may safely be inferred. The presumption would be strengthened if it could be shown that the vendor had several articles of the same species on hand, at different prices, some adulterated and some not, or adulterated to different degrees.

Little difficulty can ever be felt where the bad quality of the article arises, not from any adulteration which might possibly escape notice, but from its own intrinsic defects. As, for instance, where unsound meat is sold. And, even though the defect has escaped the notice of the purchaser, it must be remembered that the seller has generally such an accurate knowledge of the qualities of his ware, and of the previous history of each particular article, as renders it very unlikely that he could be ignorant of any fault of a glaring character.

274. Whoever adulterates any drug or medical preparation in such a manner as to lesson the efficacy, or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Adulteration of drugs.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Sale of adulterated drugs.

Under this and the previous section it is not necessary to show that the drug was so adulterated as to render it noxious to life. It is sufficient if its efficacy is lessened. The necessity for this enactment is obvious enough. All drugs are of a recognized average strength, and prescriptions are made up on the understanding that they possess such strength. If, however, the drug which a physician prescribes proves to be only half the strength on which he calculated it may prove wholly useless, and death may ensue before the error is remedied. The act only speaks of the efficacy of the drug being lessened, or its operation changed. It would, however, be necessary to show that the difference in the drug was of so considerable a character as to make an appreciable and important change in its character and effect. The use of the word "adulteration" implies the mixture of some foreign element. And, therefore, a merely inferior quality of the same medicine will not amount to an adulteration. For instance, there are many different sorts of cod liver oil, and the same oil prepared in different ways may produce different degrees of effect. But

if an apothecary, being ordered to supply a quart of cod liver oil for a person in consumption, were to send a quart of the most inferior oil of that description, this would not be an act indictable under either section, provided the oil, however inferior in quality, was genuine of its kind.

It will be observed that the essence of the offence consists not so much in the adulteration, as in the passing the article off as unadulterated. Any one who chooses may mix anything he likes with any medicine, but he must not sell it as if it was unadulterated, nor for the purpose of being sold as unadulterated. This must, I imagine, be taken as the meaning of the words "knowing it to be likely that it will be sold as if it had not undergone such adulteration." If a druggist were to sell a compounded medicine to an apothecary, communicating exactly its real nature to him, he could not be rendered criminally answerable because the apothecary sold it again as genuine, even though his knowledge of the apothecary's morals made it very probable that such might be the result. But it would be very different if it could be shown that he supplied the spurious commodity, by mutual understanding, for the purpose of being issued to the world as something different.

Sale of any drug as a different drug or preparation.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

The offence constituted by this section does not involve the idea of any adulteration or inferiority in the substituted medicine. It is sufficient that it is not in fact what it purports to be. If a chemist were to discover a drug which he considered to be just as effective as quinine, and which could be procured for half the price, he would not be justified in selling it as quinine, even though it answered precisely the same purpose. The fraud consists, not in the injury done, but in the false pretence by which persons who suppose that they are using one medicine are forced to use another against their will.

Fouling the water of a public spring or reservoir.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to

three months, or with fine which may extend to five hundred Rupees, or with both.

The Local Government may invest any Bench of Magistrates invested with the power of a Magistrate of the 2nd or 3rd class with power to try summarily all or any of the offences coming under ss. 277, 279, 285, 286, 289, 290, 292—294, 323, 334, 336, 341, 352, 426 & 447. (Crim. P.C., s. 225.)

This section does not apply to a public river (2 Calc. 383.)

Making atmosphere noxious to health.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred Rupees.

Rash driving or riding on a public way.

279. Whoever drives any vehicle, or rides on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

This is the first of a series of ss. (279—289) by which mere negligence is made punishable, apart from any injury actually done. It is plain that the essence of the offence consists in the possibility of injury, and not in its actual occurrence, as all the clauses contain the words "likely to cause hurt or injury," or words of a similar nature, and the occurrence of actual injury meets with punishment under ss. 337 & 338; though strangely enough the actual inflicting of hurt is liable to less punishment under s. 337 than the commission of the same act would be if no hurt resulted. Nor is it necessary that there should be any intention to injure, or reason to anticipate the particular injury that ensued, if it was in fact caused by the defendant's negligence. (Smith *v.* L. & S.W. Ry. Co., 6 L.R.C.P. 14.) It is sufficient if the carelessness is such as does cause, or is likely to cause, injury.

In order to make a person criminally responsible for negligence the act complained of must appear to be his own personal neglect or default. In a civil suit a man is responsible for the acts of his servants, but in criminal matters he is not. In a recent case the prisoner was a seller of fireworks. In his absence a fire took place

in his house, in consequence of which a rocket went off and caused the death of another. It was held that he was not criminally answerable. Cockburn, C.J. said,

"The prisoner kept a quantity of fireworks in his house, but that alone did not cause the fire by which the death was occasioned. It was the superadded negligence of some one else that caused it. Had the death proceeded from the natural consequence of this keeping of the fireworks, as, for instance, if from the prisoner's negligent keeping of them a rocket had gone off in spontaneous combustion and so caused the death, the conviction might have been maintained. But here the death was caused by the act of the defendant *plus* the act of some one else." (Reg. *v.* Bennet, 28 L.J.M.C. 27 Bell I.)

According to the doctrines of Civil law, even although the defendant has been guilty of negligence, still if that negligence would have been harmless only for equal or greater negligence on the part of the plaintiff, the latter cannot recover. (3 M. & W. 248; Dowell *v.* Steam Navigation Company, 26 L.J.Q.B. 59; 5 E. & B. 195; Tuff *v.* Warman, 27 L.J.C.P. 322; 5 C.B.N.S. 573; Ellis *v.* L. & S.W. Ry. Co., 26 L.J. Ex. 349; 2 H. & N. 454; Adams *v.* L. & V. Ry. Co., 4 L.R.C.P. 732.)

This rule will, I imagine, be applied in cases under the Penal Code merely for the purpose of ascertaining whether the act complained of was one whose natural or necessary result would be of an injurious character. Every one is expected to exercise an ordinary degree of care on his own behalf; and, therefore, if an accident were to happen to a person solely or principally from the absence of such ordinary care, I conceive that the defendant would not be criminally punishable, even though he was to some degree remiss and might by greater care have avoided doing harm. For instance, although the driver of a vehicle has no right to run over persons in the middle of the road, still such persons are expected to get out of the way of vehicles. Therefore, if a person gets run over by standing in the middle of the road, or by crossing it in front of a carriage, the driver would not be liable to indictment if he might fairly have expected the other to get out of the way, although, if he had driven more slowly or exercised greater care, the collision might have been avoided. (Acc. 6 Mad. H.C. Rul. 33.)

But it may well be that an indictment will be sustainable though there has been a degree of negligence on the part of the prosecutor which would incapacitate him from bringing a civil suit. The object of a suit is to recover damages for an injury, and it is fair that such damages should not be recovered if the plaintiff has brought the harm upon himself. But the object of an indictment is to protect the public, and it will be sustainable if the defendant has in any important degree, though not wholly, contributed to the injury. (See Dant's case, L. & C. 573 and note.)

The burthen of proving negligence always rests on the prosecution. The mere fact that an injury has taken place, which would not have taken place if the defendant had acted in some different way, will be no evidence of negligence, unless he acted wrongly and negligently in what he did or left undone. In a very recent case where a woman was run down by an omnibus, Erle, C.J., stated the facts of the case, and the law as follow:—

"In this case it appears that the night was dark and that there was a storm of snow, and foot-passengers crossing the street were bound to be extremely cautious in doing so, just as much as the drivers of vehicles were bound to drive cautiously. It does not appear that the defendant's vehicle was coming along at an improper speed, but, on the contrary, that there was abundant time at the rate at which the coachman was driving for foot-passengers, if aware of his approach, to have slipped backward or forward and got clear of his horses—as much time for them to have done that as for the driver to have stopped or got out of their way. The only ground suggested for imputing any breach of duty to the driver is, that at the time of the accident he was looking round to speak to the conductor; but that he might do for any lawful purpose, and at the time he did so he was driving on his proper side of the street and at a proper speed, and it amounts to no affirmative breach of his duty. There appears to be just as much reason for saying that the woman negligently ran against the defendant's horses, as that the horses were negligently driven against them; and if they had injured the horses or the omnibus, it might with equal justice have been said that they were liable for such injury; the rule being, that it is equally the duty of foot-passengers when crossing a street to look out for vehicles, as it is the duty of the drivers of vehicles to look out for foot-passengers."

Williams, J. said :—

"I entirely concur; and only wish to add that there is another rule as to leaving evidence to a jury, which is of the greatest importance, and that is, that where the evidence is equally consistent with either negligence or no negligence, it is not competent for the Judge to leave it to the jury to find either alternative, but it must be taken as amounting to no proof at all." (Cotton *v.* Wood, 29 L.J.C.P. 333; 8, C.B.N,S. 561. See Hammack *v.* White, 31 L.J.C.P. 129; 11 C.B.N.S. 588; Smith *v.* G.E. Ry. Co., 2 L.R.C.P. 4; Welfare *v.* L. & B. Ry. Co., 4 L.R.Q.B. 693; Moffat *v.* Bateman, 3 L.R.P.C. 115; Kendall *v.* L. & S.W. Ry. Co., 7 L.R. Ex. 373; 6 Mad. H.C. Rul. 32; Williams *v.* G.W. Ry. Co., 9 L.R. Ex. 157.)

But there may be cases where the very fact of the accident raises the presumption of negligence, at least so far as to throw upon the defendant the burthen of showing that there was no negligence on his part. For instance, where the plaintiff while walking along the street was injured by a barrel falling upon him from an upper window, it was held that the plaintiff need not show affirmatively that there was negligence on the part of the defendant. (Byrne *v.* Boadle, 33 L.J. Ex. 13; 2 H. & C. 722: Scott *v.* London Dock Co., 34 L.J. Ex. 220; Kearney *v.* L.B. & S.C. Ry. Co., 5 L.R.Q.B. 411, Affd. 759.) And so where the door of a railway carriage flew open merely upon being pressed by the hand of a passenger, in consequence of which he fell out, but there was no other evidence that the door or its fastening was defective, it was held that this was *primâ facie* evidence of negligence against the railway company. (Gee *v.* Metropolitan Ry. Co., 8 L.R.Q.B. 161.)

Where the person injured is in another vehicle, as, for instance, a carriage, railway train, or ship, it has been held that he is so far identified with the person managing that vehicle, that if the accident is brought about by the fault of the manager, so that the latter could not complain of it, neither can he. (Thorogood *v.* Bryan, 8 C.B. 115; doubted in the Milan, 31 L.J. Adm. 105. See however Child *v.* Hearn, 9 L.R. Ex. 176, and Armstrong *v.* L. & Y. Ry. Co., 10 L.R. Ex. 47.) And, so, where the person injured was a child, who was under the care of a grown person, to whose negligence the accident was mainly owing, though the defendant was also in some degree to

blame, it was held that no action could be maintained in the name of the child, since he was identified with the party under whose charge he was, and the latter was so much in fault that he could not have sued. (Waite *v.* N.E. Ry. Company, 28 L.J.Q.B. 258; E.B. & E. 719.) But the common law doctrine, which forbids any action where there has been contributory negligence on the part of persons connected with the plaintiff, would not be applied in cases under the Penal Code, where the immediate cause of the injury was the defendant's negligence. The question would still be, was the injury caused by the negligence or rashness of the defendant? If it was, then he is liable. (Acc. 6 Mad. H.C. Rul. 33.)

Of course, the conductor of a vehicle will always be answerable criminally, as he would formerly have been answerable civilly, for an injury resulting to those under his own care through his rashness or neglect.

Accordingly, where the defendants' vessel, owing to the negligence of their servants, struck on a sand-bank, and becoming from that cause unmanageable was driven by the wind and tide upon a sea wall of the plaintiffs' which it damaged, it was held that the defendants were liable for the damage so caused. The vessel then became a wreck, and could only be removed by being broken up. She had valuable property on board and was broken up, not as fast as she might have been, but as fast as was consistent with the removal of the property. During the interval that elapsed between her becoming a wreck and the final breaking up she did further injury. It was held that for this the defendants were not responsible, as they were entitled to remove the property before breaking her up. (Romney Marsh *v.* Trinity House, 5 L.R. Ex. 204; Affd. 7 L.R. Ex. 217.) And if the defendants had chosen to abandon the wreck at once they might have done so without breaking her up. (Brown *v.* Mallett, 5 C.B. 599.) Of course no charge can be brought under this section against any one for the negligence of his servants to which he has not himself conduced, nor at all, unless hurt or injury results or is likely to result. Upon a similar s. 285, the Bombay High Court has held that injury includes injury to the property of any one as well as to his life. (5 Bomb. C.C. 67.)

Rash navigation of a vessel.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

See cases of fog. The Lancashire, 4 L.R. Ad. & Ec. 198. The Otter, Ibid. 203.

Exhibition of a false light, mark, or buoy.

281. Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Conveying person by water for hire in a vessel over-loaded or unsafe.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

A ship owner, who knowingly sends out an unseaworthy vessel, will not be liable under this section (though he will be under s. 336) if it sinks carrying with it crew and captain, for they are not being conveyed for hire. But he would be answerable if a single passenger went to the bottom, or even if nothing whatever happened, provided the condition of the ship was and might have been foreseen to be dangerous. And I conceive it would be just the same if no danger whatever occurred, provided there would have been danger in the ordinary course of things. If a ship were to be sent to China in a state which would render it unsafe if bad weather came on it would be no answer, after the event, to show that in point of fact there had been a calm the whole way. But a ship may be seaworthy for one voyage, for instance, a short coasting expedition, which would not be seaworthy if sent out across the ocean. (Smith, Merc. L. 382.)

Danger or obstruction in a public way or navigation.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred Rupees.

Accordingly, blasting stones in a quarry adjoining a highway (Reg. *v.* Mutters, 34 L.J. M.C. 22), or the erection of telegraph posts of such dimensions as to render the way less commodious than before to the public, was held to be an unlawful act and a public nuisance,

(Reg. *v.* United Kingdom Electric Telegraph Company, 31 L.J.M.C. 166; Atty.-Gen. *v.* Terry, 9 L.R. Ch. 423.) And, so, the laying down of a tramway in a road was held to be a nuisance, as being a substantial obstruction to the ordinary use of the road for carriages and horses, and as rendering the highway substantially unsafe and inconvenient, although to that part of the public who used it as a tramway it was perfectly safe and a great convenience. (Reg. *v.* Train, 31 L.J.M.C. 169.) But a merely temporary obstruction to a thoroughfare, in doing a lawful and necessary act, as the repair of a house, is by English Law not a nuisance. (Herring *v.* Met. Bd. of Works, 34 L.J.M.C. 224, 227.) It seems doubtful whether any such exception can be grafted on s. 283, and such exceptional cases are even under English Law not regarded with favour. For instance, it was held, where an occupier of a house took up the pavement and dug a trench in the highway for the purpose of laying down a gaspipe from the main into his own house, that this act was indictable as a nuisance, and could not be justified as being such a temporary obstruction of the highway as was incidental to the proper enjoyment of his property. (Reg. *v.* Longton, 29 L.J.M.C. 118.) It will also be necessary to exercise caution in applying the English Equity Cases upon this subject. Many acts are admittedly nuisances at criminal law, though their civil consequences are not so important as to induce a Court of Equity to interfere by injunction. (See Atty.-Gen. *v.* Cambridge Gas Co., 4 L.R. Ch. 71, 83.) Accordingly, it was held on the wording of a very similar English statute, that it was an unlawful obstruction of a train where the defendant altered the signals on the line from *clear* to *danger*, so as almost to bring the train to a stand-still. (Reg. *v.* Hadfield, 1 L.R.C.C. 253.)

No offence will have been committed where the injury follows from a lawful act, done in a proper manner. For instance, where the defendant, being employed by a duly authorized corporation to construct a sewer in a highway, filled it in properly, and some months afterwards a hole formed in the place from the natural subsidence of the materials, it was held that no responsibility attached to the defendant for damage caused to the plaintiff by tumbling into the hole. (Hyams *v.* Webster, 4 L.R.Q.B. 138.) It would have been different, of course, if he had made the sewer without authority, or filled it up in a negligent manner. So, when it was found that a footpath had been dedicated to the public subject to the right of the owner of the land to plough it up for a period of each year, the exercise of such a right would not authorize either an action or an indictment. (Mercer *v.* Woodgate, 5 L.R.Q.B. 26.)

Under this section also, as in all the similar cases, the danger or injury must be such as would naturally follow from the act. Therefore, where the facts were, that the defendant being possessed of land abutting on a public foot-way excavated an area in the course of building a house immediately adjoining the foot-way and left it unprotected, and a person walking in the night fell in, the defendant was held to be liable; though, in point of law, the party who fell in was off the road, and was in law a trespasser. (Barnes *v.* Ward, 2 C.B. 292; Hadley *v.* Taylor, 1 L.R.C.P. 53.) But the contrary was held where a man made a well in the middle of his field through which

there was a right-of-way, and a person straying off the path at night fell into it. Martin, B. after citing the last case with approval, said,

"But when the excavation is made at some distance from the way, and the person falling into it would be a trespasser upon the defendant's land before he reached it, the case seems to be different. We do not see where the liability is to stop. A man going off a road in a dark night and losing his way, may wander to any extent. We think the proper and true test of legal liability is, whether the excavation be substantially adjoining the way." (Hardcastle *v.* S.E. Ry. Co., 28 L.J. Ex. 139; 4 H. & N. 67; Hounsell *v.* Smith, 29 L.J.C.P. 203; 7 C.B.N.S. 731; Binks *v.* South Yorkshire Railway Co., 32 L.J.Q.B. 26; 3 B. & S. 244.)

The fact that the owners have given permission to the public or to a certain class of persons to pass over his property does not make it a public way, so as to prevent his erecting dangerous constructions upon it, or even so as to cast upon him the obligation of fencing them round so as to guard against injury from them. Therefore, where the workmen in a Government dock-yard were allowed to cross certain land within the premises in order to reach water closets, and a Government contractor was allowed to erect machinery which crossed the shortest and most convenient, though not the only way to these water closets, and one of the workmen was injured by the machinery, it was held that no action was maintainable against the contractor. (Bolch *v.* Smith, 31 L.J. Ex. 201; 7 H. & N. 736; Gautret *v.* Egerton, 2 L.R.C.P. 731.) But even in such a case the owner of the land is bound not to do anything likely to cause injury to those who came upon the land by his permission without giving them due notice, or otherwise placing it in their power to protect themselves. Therefore, where upon a private road, along which persons were in the habit of passing with the owner's permission, the defendant placed building materials and gave no notice by signal or otherwise, it was held that he was liable for the injury which accrued to a passer-by. Willes, J. said,

"The defendant had no right to set a trap for the plaintiff. A person coming on lands by license has a right to suppose that the person who gives him the license will not do anything which causes him an injury." (Corby *v.* Hill, 27 L.J.C.P. 318; 4 C.B.N.S. 556, and see Bolch *v.* Smith, ub. supra. White *v.* Phillips, 33 L.J.C.P. 33.)

The property which creates the nuisance must be under the control of the person charged, so as to make it possible for him to remove obstruction or cause of danger. Accordingly, where a ship sunk in a navigable river without the fault of the owner and was abandoned by him, it was held that he was not answerable either by indictment or suit for any injury that might result from its lying in the bed of the river. The Court considered that after shipwreck and abandonment the property ceased to be in the possession and under the control of the former owner, and that he was under no obligation to add to his existing misfortune by incurring the expense of either raising the vessel or keeping a continual watch over it. (Brown *v.* Mallet, 5 C.B. 599; Romney Marsh *v.* Trinity House, 5 L.R. Ex. 204, *ante* p. 225.)

A question may often arise under this section as to the respective liabilities of the owner and the occupier of property. According to the doctrine both of Criminal and of Civil law the tenant is the person primarily liable, where the property in his occupation is a

nuisance to others, either through an act or an omission on his part. And this would be so even though as between himself and his landlord he was under no obligation to repair. In an old case, the defendant was indicted for not repairing a house standing ruinous upon the highway and likely to fall. Just such a case as is pointed to by s. 283. The indictment alleged that he was bound to repair, *by reason of the nature of his holding*, and the verdict found that he was a tenant-at-will who certainly is not bound to repair, as regards himself and his lessor. But the Court held that the statement that he was bound to repair by reason of his holding was

"Only an idle allegation; for it is not only charged, but found, that the defendant was occupier, and in that respect he is answerable to the public; for the house was a nuisance as it stood, and the continuing the house in that condition is continuing the nuisance. And as the danger is the matter that concerns the public, the public are to look to the occupier and not to the estate, which is not material in such case to the public." (Reg. *v.* Watts, 1 Salk. 357; See Tarry *v.* Ashton, 1 Q.B.D. 314.)

So, in a case where the charge was that the defendant, the occupier of a house, kept his privy in such a state that the soil penetrated into his neighbour's cellar, the Court pithily said, "he whose dirt it is must keep it that it may not trespass." (Tenant *v.* Goldwin, 1 Salk. 360; Hodgkinson *v.* Ennor, 32 L.J.Q.B. 231; Fletcher *v.* Rylands, 1 L.R. Ex. 265; 3 L.R.H.L. 330; Humphries *v.* Cousins, 2 C.D.D. 239.)

In order to make a person liable for injury to others caused by the management of his property, there must either be negligence in its management, or such a non-natural use of it, as compels the person so using his property to see at all hazards that no loss follows to others. In the case of Fletcher *v.* Rylands (ub. sub.) the latter was the *ratio decidendi.* There, a land-owner had constructed a reservoir upon his land, the water from which had escaped through some old shafts, of which no one appears to have been aware, into the plaintiff's mine. It was held that the defendant was liable, on the ground, as expressed by Lord Cranworth, that "if a person brings or accumulates on his land anything which, if it should escape, may cause damage to his neighbour he does so at his peril. If it does escape and cause damage he is responsible, however careful he may have been and whatever precautions he may have taken to prevent the damage." (3 L.R.H.L. 340.) And so the Lord Chancellor (Cairns) spoke of this as being a non-natural use of the land, for the purpose of introducing into the close that which in its natural condition was not in or upon it. (Ibid. 339.) See too Smith *v.* Fletcher, 7 L.R. Ex. 305; 9 Ibid. 64; 2 A.P.P. Ca. 781; West Cumberland Iron & Steel Co. *v.* Kenyon, 6 C.H.D. 773; Wilson *v.* Waddell, 2 A.P.P. Ca. 95; Broder *v.* Saillard, 2 C.H.D. 692.

In a recent case in Madras, of great importance, it was attempted to extend the doctrine of Fletcher *v.* Rylands to the case of tanks in this country, and to hold the proprietor of the tank liable for injury caused by its bursting, though from no negligence in the construction or repair of the tank. The High Court, however, refused to apply the doctrine to such a case, holding that in India the storing-up of water for agricultural was the natural, proper, and necessary mode of using the land and the water which came upon it, and that the land-

owner was only liable for negligence. (Madras Ry. Co. *v.* Zemindar of Carvaitnugger, 5 Mad. H.C. 139; 6 Ibid. 180; Affd. in P.C. 1 L.R. I.A. 364.) And, so, even in England, subsequently to the case of Fletcher *v.* Rylands, where the defendant being occupant of the upper story of a house, the ground-floor of which was occupied by the plaintiffs, and the rainwater from the roof being collected by gutters into a box, from which it was discharged into the drains, a rat made a hole in the box, from which the water flowed upon and injured the plaintiff's goods, it was held that the defendant had dealt with the water in the usual way, and not having been guilty of any negligence was not liable. (Carstairs *v.* Taylor, 6 L.R. Ex. 217.) A similar decision was given where the property of the tenant on the ground-floor of a house was injured by leakage from a water closet occupied by the tenant of the second floor. It being found that the owner of the water closet did not know of the defect in the water closet and was guilty of no negligence, the Court held that he was not liable. (Ross *v.* Fedden, 7 L.R.Q.B. 661.)

The doctrine of Fletcher *v.* Rylands appears also to be limited by a further exception, viz., that even where the dangerous element has been introduced by the defendant himself, still if its escape arose from vis major, or the act of God, he would not be answerable. (See per Blackburn, J., 1 L.R. Ex. 280, approved by Ld. Cairns, C. 3 L. R.H.L. 339, and by Ld. Cranworth, Ibid. 340.) This was the ground of the decision in Nichols *v.* Marsland. (10 L.R. Ex. 255; Affd. 2 Ex. D. 1.) There the defendant had formed three artificial lakes upon his property by damming up a stream which ran through it. In consequence of a thunderstorm accompanied by a rainfall of unprecedented violence, the embankments were swept away, and the damage complained of was caused by the stored-up waters rushing out. It was found by the jury that there was no negligence in the construction or maintenance of the works, and that the rainfall was most excessive. The Court distinguished the case from that of Fletcher *v.* Rylands on the ground that "there the defendant poured the water into the plaintiff's mine. He did not know he was doing so; but he did it as much as though he had poured it into an open channel which led to the mine without his knowing it. Here the defendant merely brought it into a place where another agent let it loose." As to vis major, the Court said, "In this case I understand the jury to have found that all reasonable care had been taken by the defendant, that the banks were fit for all events to be anticipated, and the weirs broad enough; that the storm was of such violence as to be properly called the act of God, or vis major. No doubt, not the act of God or vis major in the sense that it was physically impossible to resist it, but in the sense that it was practically impossible to do so. Had the banks been twice as strong, or if that would not do, ten times, and ten times as high, and the weir ten times as wide, the mischief might not have happened. But those are not practical conditions, they are such that to enforce them would prevent the reasonable use of property in the way most beneficial to the community."

It will be observed that this case was very similar to that of the Carvaitnugger Zemindary, which however was not cited either in the argument or judgment.

Even acts done by others, not upon the defendant's property, nor with his permission, if caused by his use of his own property, may be the subject of an indictment. For instance, a man established upon his land a shooting ground for killing pigeons, in consequence of which persons collected in the neighbourhood to kill the pigeons which escaped from his land, and he was indicted and convicted for the nuisances so caused, though there was evidence that he employed persons to keep these irregular shooters off his grounds. Littledale, J. said,

"It has been contended that to render the defendant liable it must be his object to create a nuisance, or else that must be the necessary and inevitable result of his act. No doubt it was not his object, but I do not agree with the other position; because, if it is the probable consequence of his act he is answerable as if it were his actual object.

And Taunton, J. said,

"It is laid down that all common stages for rope dancers and all common gaming houses are nuisances in the eye of the law, not only because they are great temptations to idleness, but because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood. Also, it has been holden that a common playhouse may be a nuisance if it draw together such a number of coaches or people as prove generally inconvenient to the places adjacent. The present is a very similar case." (Rex. *v.* Moore, 3 B. & Ad. 184, 188.)

So in this country nautches, or displays of fireworks upon a man's own premises, might be indictable on account of the danger or obstruction caused by them to passers-by. (Walker *v.* Brewster, 5 L.R. Eq. 25.)

According to civil law, and *a fortiori* according to criminal law, the landlord is not liable, merely because premises in the occupation of a tenant are in such a state as to amount to a nuisance. Where the owner of property was sued for not repairing his fences, whereby the plaintiff was damaged, Lord Kenyon, C.J. said,

"It is clear that this action cannot be maintained against the owner of the inheritance when it is in the possession of another person. It is so notoriously the duty of the actual occupier to repair the fences, and so little the duty of the landlord, that without any agreement to that effect the landlord may maintain an action against his tenant for not doing so, upon the ground of the injury done to the inheritance. And deplorable indeed would be the situation of landlords if they were liable to be harrassed with actions for the culpable neglect of their tenants." (Cheetham *v.* Hampson, 4 T.R. 218.)

And, so, it was held where the action against the owner, who was not the occupier of the house, was for allowing sewers to remain undrained so as to be unhealthy. (Russell *v.* Shenton, 3 Q.B. 449.)

On the other hand, a person who has created a nuisance upon his property while in his possession cannot free himself from liability merely by leasing it out to another. As, for instance, if a man were to demise a house which was in a ruinous and falling state, or which had any other dangerous or unwholesome nuisance upon it. R. *v.* Pedly, 1 Ad. & E. 822; Todd *v.* Flight, 30 L.J.C.P. 21; 9 C.B.N.S. 377; Draper *v.* Sperring, 30 L.J.M.C. 335; 10 C.B.N.S. 113; Nelson *v.* Liverpool Brewery Co., 2 C.P.D. 311.) Here, the continually recurring evil is the result of the acts done or allowed during possession, and whose continuance is sanctioned by letting out the premises on which they are, and, therefore, they will be properly punishable.

And so it is at civil law, where the landlord receives back into his possession property upon which a nuisance has been created during the tenancy, and then lets it out again with the nuisance upon it. (Ibid.) For the person who receives a profit from the use is answerable for the nuisance. (1 Ad. & E. 827.)

But under the Code, inasmuch as the landlord had not himself caused the obstruction by doing any act, his liability would turn upon the question whether he had, while the property was again in his possession, omitted such proper precautions as he was bound to take to prevent the continuance of the nuisance. This would be a question of fact, depending on his own personal knowledge of the existence of the nuisance, upon the length of time the property remained in his possession, and upon the absence of any proper steps to secure its removal. If he leased the property out again, not knowing of the existence of anything injurious, or with due stipulations that the tenant should remedy it, I do not think he would be indictable. (Pretty *v.* Bickmore, 8 L.R.C.P. 401; Gwinnell *v.* Gamer, 10 L.R.C.P. 658.)

And it has been held, that a landlord who continued a tenancy from year to year was answerable for a nuisance which had been created since the commencement of the tenancy, and of which he had no knowledge, because each year that the tenancy was continued was a new letting. (Gandy *v.* Jubber, 33 L.J.Q.B. 151.) But such a case would clearly not be within the Penal Code, as it could not be said that the property with the nuisance upon it had ever been in his possession or under his charge.

A different question would arise where the party who created or permitted the nuisance sold the property instead of leasing it. Here, according to English civil law, his liability would cease, and that of the purchaser be substituted. The latter position was expressly laid down by Littledale, J. in one of the cases cited above, (1 Ad. & E. 827) where he says,

> "If a nuisance be created and a man purchases the premises with the nuisance upon them, though there be a demise for a term at the time of the purchase, so that the purchaser has no opportunity of removing the nuisance, yet by purchasing the reversion he makes himself liable for the nuisance."

The former position seems also to follow from the principle on which the responsibility of the landlord is rested, viz., "that the receipt of rent is an upholding and continuing of the nuisance." (1 Ad. & E. 826.) It necessarily follows that one who has parted with all interest in and power over the land must cease to be answerable in respect of it. I conceive that in such a case the purchaser would not be criminally liable under s. 283. It is clear that the purchaser of property out on lease has it not either "in his possession nor under his charge," and the danger, &c., certainly does not arise from his "doing any act or omitting to take order with the property" over which he has no control. As regards the seller, the case supposes that the danger, &c., has arisen from acts done or omitted by him while the property was in his possession. If so, he would remain liable under the Code. Of course, as his possession became more remote in point of time, the difficulty of tracing any danger, injury, or obstruction to his immediate act or omission would become greater and greater.

Again, there may arise many questions as to who is the person in whose possession or under whose charge the property is or was at the time of the wrongful act. I imagine that these words describe what is generally known as the occupant of premises. Where the owner keeps the property in his own hands he will be the occupant: where he puts in a tenant, the latter will be the occupant, and the occupation of servants or agents will in either case be the occupation of the principal. (Rich *v.* Basterfield, 4 C.B. 783.) So, even a landlord may, under temporary circumstances, be in possession of premises which are leased out, as, for instance, if they are given up to him for the purpose of executing repairs. (Leslie *v.* Pounds, 4 Taunt. 649.)

But although the possession of the servant or agent will be the possession of the master, the acts or omissions must be the personal acts or omissions of the occupant himself. In one case the captain and pilot of a steamer—that is, the persons in whose possession and charge it was—were indicted for running down a smack, and it appeared that when the steamer started there was a man forward in the forecastle to keep a look out, that the accident happened at night, when the captain and pilot were on the bridge between the paddle boxes, and that no person was forward on the look out at the time. Park, J. said,

"Then the captain is not responsible in felony. It is the fault of the person who ought to be there, and who may have disobeyed orders. In a criminal case every man is responsible for his own act; there must be some personal act. These persons may be civilly responsible."

At the conclusion of the case a juryman asked, "Is the captain bound to have a person on the look out?"

Alderson, B. answered,

"Civilly he is, but not criminally." (1 Russ. 873. See too Daniel *v.* Metropolitan Railway Co., 3 L.R.C.P. 216, 519.)

This last answer must be taken with a little explanation, or it may be misunderstood. The captain of a ship is bound to take the usual precautions to have a person on the look out. If the captain of a steamer were to go quietly to sleep, knowing perfectly that there was no watch on deck and that there would be no watch, he would be criminally liable, for this would be a direct act of personal misconduct. What the judgment meant was, that if he had reason to believe that the proper precautions were being taken he would not be answerable if those precautions were in fact neglected without his knowledge. (Dickenson *v.* Fletcher, 9 L.R.C.P. 1 *acc.*)

Again, who may be said to be "in charge" of property? I conceive, only the person whose duty it is, in consequence of that position, to do or refrain from the particular act which is the ground of complaint. If I put a servant in charge of my house during my absence he will be answerable if he lets off rockets out of the windows, so as to frighten the horses of passers-by. But he will certainly not be answerable for omissions to repair, which he has neither power nor authority to do.

Again, can a person be said to be in charge of property, because he has a particular duty cast upon him in respect of it? For instance, a landlord who is bound to make all repairs in a house? Municipal Commissioners whose duty it is to keep the roads in order? Civilly, the landlord and the Commissioners would certainly be liable to any one who was injured by their neglect. (Rogers *v.* Payne, 2 H. Bl. 350; Mersey Docks *v.* Gibbs, 1 L.R.H.L. 93.) Criminally, I think, the landlord would not be liable, but that the Commissioners would. Upon the latter point, however, I advance my opinion with very great diffidence.

I think a landlord would not be liable merely upon his agreement with the tenant. The civil action rests upon the breach of his duty, and upon the ground that if the party injured were compelled to sue the tenant, the latter would have his action against the landlord, which would tend to the multiplication of suits. (Per Heath, J. 2 H. Bl. 251.) The statutory liability is limited to those who have possession or charge of the property, both of which words seem to me to involve the idea of custody, and not to refer merely to the power or duty of doing acts.

As regards Municipal Commissioners, however, Act XVI of 1856, s. 5, expressly enacts that all public streets and roads, and their materials, "shall be vested in and belong to the Commissioners." Then as regards the duty cast upon them, s. 9 provides that they "*shall, so* far as the public funds at their disposal will admit, from time to time cause the public streets and roads to be maintained and repaired; ......and *may* also make and keep in repair any foot-ways." (*See Madras Act IX of* 1867, *ss.* 100, 107.) Here, then, we have the roads made the property of the Commissioners, and an imperative duty, to the extent of their funds, cast upon them of repairing the highways. Now, according to English law, a similar duty of repair was cast upon the inhabitants of the parish, and for breach of this duty an indictment would lie. No doubt it was also held that no indictment would lie against Turnpike Trustees for neglect of the roads, but those decisions rested upon the principle that the parties properly liable were the inhabitants of the parish, who were at once the owners of the road and bound at law to repair it. (R. *v.* Netherthong, 2 B. & Ald. 179; Reg. *v.* Oxford and Witney, 12 Ad. & E. 427.) It appears to me, then, that under Act XIV of 1856 the Municipal Commissioners are placed in the same position as the inhabitants of an English parish were at common law, except that their obligations terminate with their funds. It would follow, then, that under s. 283 they could be indicted for injury resulting from their own acts or omissions, provided, in the latter case, they were shown to have funds at their disposal. But if the nuisance complained of arose, not from any wrongful act or omission of their own, but from the wrongful act or omission of some person employed by them and of which they had no actual cognizance, they would be liable to action (Mersey Docks *v.* Gibbs, 1 L.R.H.L. 93; Coe *v.* Wise, 1 L.R.Q.B. 711; Foreman *v.* Canterbury, 6 Ibid. 214; Winch *v.* Conservators of Thames, 9 L.R.C.P. 378) and, apparently, also to indictment, if the nuisance were caused by the acts of persons employed by them to do the particular thing, in the doing of which the nuisance arose. (Reg. *v.*

Stephens, 1 L.R.Q.B. 702.) But I do not think they could be indicted for injuries arising from the wrongful omissions of their servants, unless traceable to their own personal neglect.

It is certainly to be regretted that neither the framers of the Code nor the Law Commissioners should have noticed, either in their illustrations or reports, any of the very important questions to which the sections in this chapter give rise.

Under all these sections it will probably be held, in conformity with the principles of civil law, that much greater caution will be required in reference to the general public than will be called for in regard to a man's own servants who are employed in any occupation of danger. Their employment is voluntary, and, from its very nature, gives them full notice of all the perils to which they are exposed, and of the precautions by which those perils may be avoided. Accordingly, where a workman was killed while using a machine for raising weights, the evidence being that another and safer mode of raising weights, was usual and had been discarded by orders of the defendant, it was held that the latter was not liable. Pollock, C.B. said, "A servant cannot continue to use a machine he knows to be dangerous at the risk of his employer." (Dynen *v.* Leach, 26 L.J. Ex. 221.) But it would be otherwise if the master had directly conduced to the injury of his servant by any act of personal neglect. As, for instance, where the master was a miner and the workman had pointed out that a stone overhanging the works was dangerous, and likely to fall, and it did fall soon after and killed him. And, so, in another case, where a miner was killed by the fall of a stone upon him while he was being drawn up through the shaft of the mine. There, it was found that the stone fell "by reason of the shaft being in an unsafe state from causes for which the master, the defendant, was responsible." (Cited, 26 L.J. Ex. 222; Mellors *v.* Shaw, 30 L.J. Q.B. 333; 1 B. & S. 437; Holmes *v.* Clarke, 31 L.J. Ex. 356; Watling *v.* Oastler, 6 L.R. Ex. 73; Britton *v.* G. W. Cotton Co., 7 Ibid. 130.)

So, persons engaged in a Gunpowder manufactory, in a Chemist's laboratory, or in a Druggist's shop are expected to know the dangerous character of the articles with which they are surrounded, and to take the proper precaution against them. But if similar commodities were left about in places open to servants, strangers, and the public generally, a much greater degree of precaution would be necessary, in guarding against danger and in giving notice to those who might expose themselves to risk.

By s. 336 any rash or negligent act by which life or safety is endangered is punishable.

Negligent conduct with respect to any poisonous substance.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or

negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Negligent conduct with respect to any fire or combustible matter.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

It has been held upon this section that the words "injury to any person include injury to his property as well as to his person." (5 Bomb. C.C. 67.)

See note to s. 277, *ante* p. 222.

Negligent conduct with respect to any explosive substance.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine

which may extend to one thousand Rupees, or with both.

See note to s. 277, *ante* p. 222.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Negligent conduct with respect to any machinery in the possession or under the charge of the offender.

See as to unfenced machinery, Indermaur *v.* Dames, 2 L.R.C.P. 311; Britton *v.* G. W. Cotton Co., 7 L.R. Ex. 130.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Negligence with respect to pulling down or repairing buildings.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term

Negligence with respect to any animal.

which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

See note to s. 277, *ante* p. 222.

The principal point to be considered under this section will be the knowledge that the defendant had of the dangerous properties of the animal. Where the very nature of the animal gives him warning his knowledge will be assumed, as, for instance, if a person were to choose to make a pet of a tiger or a bear. Otherwise, express knowledge will have to be shown, in order to involve the necessity of unusual caution. Where injury is done by a horse, a bull, or a dog, and it is not shown that the animal was peculiarly vicious, or that his vice was known to his master, no indictment could be maintained unless he had neglected the ordinary precautions employed by every one who uses such animals. (Hammack *v.* White, 31 L.J.C.P. 129; 11 C.B.N.S. 588; Cox *v.* Burbidge, 13 C.B.N.S. 430; 32 L.J.C.P. 89; 4 R.J. & P. 359; 3 Mad. H.C. Appx. 33.) But if the animal had evinced a savage disposition, to the knowledge of the owner, it would not be necessary to shew that he had actually injured any one. (Worth *v.* Gilling, 2 L.R.C.P. 1.) And if the owner appoints a servant to take care of an animal, all facts showing its character which are known to the servant are, in view of the law, known to the master, so as to make him answerable for their consequences. (Baldwin *v.* Casella, 7 L.R. Ex. 325.) And although notice of its vicious habits will not necessarily and as a matter of law be sufficient, if given to any servant, still if such notice is given to one who is entrusted, even occasionally only, with the conduct of the defendant's business, with the intention that it should come to the knowledge of the defendant, it is for the jury to say whether or not it amounts to notice to him. It will be for them to say, whether the persons who received actual notice stood in such a relation to the defendant that it was their duty to communicate the notice to him, and whether in fact they did so communicate it. (Applebee *v.* Percy, 9 L.R.C.P. 647, 658.)

Where the animal is known to be mischievous, the rule of civil law seems to be to infer negligence absolutely, from the mere fact that an injury has followed. Where the injury arose from a savage monkey, Lord Denman laid down the law as follows:

> "The conclusion to be drawn from an examination of all the authorities appears to be this, that a person keeping a mischievous animal, with knowledge of its propensities, is bound to keep it secure *at his peril;* and that if it does mischief, negligence is presumed, without express averment. The negligence is in keeping such an animal after notice." (May *v.* Burdett, 9 Q.B. 112. See 1 L.R. Ex. 281.)

It is probable, however, that the interpretation of this section would be stricter, as is always the case where the doctrine of constructive negligence is applied to criminal law, and that if every proper and reasonable precaution had been taken no criminal indictment would lie, even though the animal finally escaped and did damage. A good deal would also turn upon the lawfulness of the object for which the creature was kept. Even if it were legal negligence in a private

person to keep a tiger for his own amusement, the same doctrine would not be applied to a keeper of a Government menagerie. If it were, such an institution would become impossible. Again, it would be a different thing if it could be shown that the animal was justifiably kept for purposes of self-defence. Accordingly, where a man got into the garden of another by night and was there injured by a dog, and it appeared that the dog was kept for the protection of the garden, and was tied up all day, but was let loose at night, Lord Kenyon said,

"That every man had a right to keep a dog for the protection of his garden or house: that the injury which this action was calculated to redress was, where an animal known to be mischievous was suffered to go at large, and the injury therefore arose from the fault of the owner in not securing such animal so as not to endanger or injure the public: that here the animal had been properly let loose, and the injury had arisen from the plaintiff's own fault in incautiously going into the defendant's garden after it had been shut up." (Brock *v.* Copeland, 1 Esp. 203.)

On the other hand, where a commoner turned out on a common, across which there where public footpaths, a horse which he knew to be vicious and dangerous and it kicked and killed a child, it was held that he was criminally liable, though the child had strayed on to the common a little way off the path. And the majority of the Judges seemed to be of opinion that the result would have been the same, though the child had strayed a considerable distance from the path. (Reg. *v.* Dant, 34 L.J.M.C. 119; L. & C. 567.) Under s. 289 the question would be merely one of fact; was the danger which followed one which was rendered probable by letting loose such an animal in such a place?

The defendant is only bound to guard against probable danger, that is, such danger as may be calculated to arise from the nature of the beast itself. But I conceive that no indictment would lie if an injury arose to any one from his own obstinate and foolhardy conduct in venturing too near it, with full knowledge of its qualities. And even in civil cases, Lord Denman said, that if the injury was solely occasioned by the wilfulness of the plaintiff after warning, that might be a ground of defence. (9 Q.B. 113.)

Here also, as I have remarked before, a greater degree of precaution will be necessary in dealing with the general public than will be required in the case of servants, who take the risk with full knowledge of it. A livery stable-keeper who knowingly sent a vicious untrained horse to a customer to ride without informing him of its qualities, would be liable under this section. But he would not be so if he merely put a rough-rider upon the horse's back to break him in, though in fact the man were thrown and killed.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred Rupees.

Punishment for public nuisance.

See note to s. 277, *ante* p. 222. The fact that a prostitute visits a dâk bungalow, after being warned by the person in charge not to do so, is not indictable under this section, when she was not shown to have annoyed any one, or committed any impropriety, beyond

what was involved in her attending upon a traveller at his request. (2 N.W.P. 349.)

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Continuance of nuisance after injunction to discontinue.

See Cr. ss. 518, 521, *ante* p. 156, 157.

292. Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Sale, &c., of obscene books.

Exception.—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

See as to this section and ss. 293 & 294, note to s. 277, *ante* p. 222.

The word "obscene" is one of considerable ambiguity. In one sense, Hiram Power's Statue of the Greek Slave, Ruben's Picture of the Judgment of Paris, and the works of Martial or Catullus, must be considered as obscene, that is, as capable of exciting sensual feelings. But it could not be endured that a shopkeeper should be prosecuted for selling the works just mentioned. I conceive that the word must be limited to those productions whose primary and palpable result is to excite to lust. Whatever may have been the original object of such writers as Martial or Catullus in their amatory odes, in the present day they are bought and read as monuments of a classical age. Nor can there be any greater indelicacy than the delicacy of those who profess to find impropriety in some of the noblest works of painting and sculpture that have descended to our times. But, however difficult it may be to draw the line in words, the distinction between the two cases will generally be bold enough. In the language of Cockburn, C.J., "the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral

influences, and into whose hands a publication of the sort may fall." Therefore, where a person was indicted for selling a book called "The Confessional Unmasked," shewing the depravity of the Romish Priesthood, the iniquity of the confessional, and the questions put to females in confession, and it was found that half of the book was grossly obscene, but that the defendant sold it not for gain, nor for the purpose of prejudicing good morals, but for the purpose of exposing what he considered to be the errors of the Church of Rome, a conviction was supported. The Court held that the immediate motive of the defendant was not the question. If, in fact, the work was one of which it was certain "that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character," then its sale was a criminal offence, and it was immaterial that the defendant had in view an ulterior object which was innocent or even laudable. The law assumed that he contemplated those results which would naturally flow from the perusal of the treatise. (Reg. *v.* Hicklin, 3 L.R.Q.B. 360, 371.) And it makes no difference that the obscene matter is contained in an accurate account of a judicial proceeding. (Steele *v.* Brannan, 7 L.R.C.P. 261.)

Having in possession obscene books for sale or exhibition.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Obscene songs.

294. Whoever sings, recites, or utters in or near any public place any obscene song, ballad, or words to the annoyance of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

The words of this section, which make it necessary that the place should be public, and that the act should be to the annoyance of others, seems to point to such open obscenity as would have been a nuisance at common law.

"It seems an established principle, that whatever openly outrages decency and is injurious to public morals, is a misdemeanor at common law." (2 Camp. 90 n.)

According to English law, such an act, even if committed in a place of public resort, was not indictable if only one person could

have been annoyed by it. (Arch. 792.) But though the plural word 'others' is used in this section it includes the singular number under s. 9, unless the contrary appears from the context. There certainly is no reason why a person who bawled out an indecent song in a railway carriage, to the annoyance of a single lady, should not be punished for it.

An omnibus is a public place for this purpose, and so, of course, would a railway train be (Arch. 792), or any other place where a great number of persons might be affected by the criminal act. (Reg. *v.* Thallman, 33 L.J.M.C. 59; L. & C. 326.) Or a public urinal. (Reg. *v.* Harris, 1 L.R.C.C. 282.)

"In considering whether a particular locality is a public place or not the Courts look at it in respect to the manner in which it was used at the time of the alleged offence. Thus, if a village storehouse to which people resort for the purchase of goods, or a shop in which medicines are sold, is locked up at night, it then ceases to be a public place, though it was such during the day. And the general principle seems to be, that the place must be one to which people are at the time privileged to resort without an invitation. On the other hand, any place may be made public by a temporary assemblage; and the exclusion of a few persons is not alone sufficient to prevent its being such." (1 Bishop, s. 315.)

A charge under s. 292 or 294 should be specific as to the words or representations alleged to be obscene, and the conviction should express by what he finds to have been exhibited, or uttered, so that the legality of the conviction may be open to examination on appeal. (1 Calc. 356.)

Keeping lottery-office.

294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand Rupees. (Act XXVII of 1870, s. 10.)

See Act XXVII of 1870, s. 13, *ante* p. 116.

"No charge of an offence punishable under s. 294A, shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government." (Act XXVII of 1870, s. 14; Act X of 1875, s. 131.)

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

Injuring or defiling a place of worship, with intent to insult the religion of any class.

295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disturbing a religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Trespassing on burial places, &c.

297. Whoever, with intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Uttering words, &c., with deliberate intent to wound the religious feelings of any person.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

These sections are of so dangerous a character, that it is most necessary to bear in mind the general exceptions contained in ss. 76-80. It is clear that a missionary or teacher, *bonâ fide* pursuing his calling, could not be indicted for any offence he might give to others, nor, of course, could a Magistrate, who felt it to be his duty to prevent or interrupt a religious procession. Nor a Municipal Commissioner or Engineer who dug up a burial ground, or threw down a temple, in the performance of some public work. Nor a person who did such an act upon ground which was lawfully his own, whatever might be the offence given thereby.

The original framers of the Code say in reference to s. 298, (p. 48.)

"In framing this clause we had two objects in view: we wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbours by words, gesture or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by a person not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause."

Notwithstanding this explanation the complaints against this section were numerous, not only from the Missionaries, but from the Company's Judges, one of whom, Mr. Giberne, Judge of the Bombay Sudder Court, says, "this clause might, I think, be excluded, for it almost amounts to a prohibition of preaching the Gospel." In commenting upon these criticisms the Commissioners quote the above passage, and go on to say—

"We understand these instances to be mentioned as indicative of the strictness with which the definition is to be construed, so as not to make a person criminally liable for words, &c., wounding the religious feelings of another, unless a deliberate intention so to wound his feelings be unequivocally manifested, as it would be by mere railing and abuse, and by offensive attacks upon his religion, under the pretext of discussion, without any argument which an impartial arbiter could possibly believe to have been addressed to him in good faith merely for the purpose of convincing him of the truth. It is here to be observed, that it is not the impression of the offended party that is to be admitted to decide whether the words uttered deserve to be considered as insulting, and whether they were uttered with the deliberate intention of insulting; these are points to be determined upon cool and calm consideration of the circumstances by the Judge. The intention to wound must be *deliberate*, that is, not conceived on the sudden in the course of

discussion, but premeditated. It must appear, not only that the party, being engaged in a discussion with another on the subject of the religion professed by that other, in the course of the argument consciously used words likely to wound his religious feelings, but that he entered into the discussion with deliberate purpose of so offending him. In other places in the Code, a party is held guilty if he causes a certain effect, the causing of which is an offence, intending to cause that effect, *or knowing that his act was likely to cause it.* Here, there is a marked difference; although the party uttering offensive words might be conscious at the moment of uttering them that they were likely to wound the feelings of his audience, yet if it were apparent he uttered them on the spur of the occasion, in good faith, simply to further his argument—that he did not take advantage of the occasion to utter them in pursuance of deliberate purpose to offend—he would not, we think, be liable to conviction under s. 298. If, however, a party were to force himself upon the attention of another, addressing to him, an involuntary hearer, an insulting invective against his religion, he would, we conceive, fall under the definition, for the reasonable inference from his conduct would be, that he had a deliberate intention of wounding the religious feelings of his hearer." (Second Report, 1847, s. 252.)

I have thought it important to give the above extracts at considerable length, as showing what was really meant by those to whom we are indebted for this clause. At the same time I cannot but feel most apprehensive of the effect of a section which requires so much explanation, and is susceptible of so many refined distinctions.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

OF OFFENCES AFFECTING LIFE.

Culpable homicide.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(*a*) A lays sticks and turf over a pit with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(*b*) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence: but A has committed the offence; of culpable homicide.

(*c*) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

To constitute the offence of culpable homicide, not only must the act of the offender have caused death, but it must have been done with the intention that death should be caused, or the knowledge that death was likely to be caused by the act.

Intention must not be confounded with wish. Suppose a man discharges a pistol at another. He may either wish to kill him, as, for instance if the person aimed at is his enemy; or he may intend to kill him, but wish that his death could be avoided, as a criminal firing at a policeman to avoid arrest; or he may intend to wound him, knowing that the wound may be fatal, but neither wishing nor intending that it should be so; or he may simply fire at him, as a man often did in a duel, neither wishing nor intending either to kill or wound, but merely aiming in the direction of his opponent, and taking his chance of any consequences that may follow. If in any one of these instances death ensued the act would be culpable homicide, unless legally justifiable.

Upon a charge of culpable homicide, whether amounting to murder or not, it is for the prosecution to establish the intention or knowledge which the law requires to make up the offence. (1 R.C.C. C.R. 5.) Where these are not established, or where they are negatived, the prosecution must fail. (5 R.J. & P. 217.) It is not, however, to be supposed that direct evidence of the prisoner's mental condition is necessary. The circumstances which prove the act will in general prove the knowledge or intention. It is a fair presumption that every man knows the probable result of the act which he does, and if he knows the result then it is an equally fair inference that he intends it; *i.e.*, that in doing the act he contemplates that it will lead to that particular result. (1 R.C.C.C.R. 9.) Sometimes this presumption is so violent that it can only be rebutted by establishing special ignorance on the part of the defendant. For instance, if a savage, who had never seen fire arms, were to discharge a gun at another, no inference could be drawn that he intended to kill. In the case of an ordinary person the inference would be irresistible. Sometimes the presumption is so weak that it can only arise by showing special knowledge. If a physician were to cane a patient who had heart disease, it might probably be assumed that he knew his act was likely to cause death. In the case of an ordinary person the contrary presumption would be the fair one.

Cases in which death is caused while the person is doing an unlawful act, or a lawful act in a negligent or improper way, are always treated by the English law as manslaughter. They will be culpable

...der the Penal Code if the death was intended, or might ... been foreseen. For instance, if a pointsman were to go to ... his post when a train was known to be on its way to the place ... death ensued, this would be manslaughter, and culpable homicide ... But if he left his post for a short interval, in violation of express general orders, at a time when no train ought to have been on its way, and during his absence a train which no one could have anticipated arrived, and a fatal accident took place, this would certainly be manslaughter by English law. But if the jury were of opinion, as they probably would be, that he could not have known that his absence was likely to cause death or any accident, it would not be culpable homicide, though it would be punishable under ss. 336-338, 304A, according to the injurious results, if any, which followed from it. So, if a man unlawfully struck another a blow which, under ordinary circumstances, would not be dangerous, but which in consequence of the person struck having a diseased organ, such as an enlarged spleen, actually caused death, this by English law would be manslaughter. But it would not be culpable homicide, unless the defendant knew of the disease which rendered his act likely to be fatal. (1 R.C.C.C.R. 77.)

This section only speaks of acts done, but by s. 32 (*ante* p. 22) words which refer to acts done are extended to illegal omissions, unless the contrary appears from the context. The Code as originally drawn (s. 294) included in the definition of culpable homicide the case of a person who "omits what he is legally bound to do." As illustrations were given, the cases of a hired guide who deserted a traveller in a jungle, where he dies; a person legally bound to supply food to the mother of a suckling child who omits to do so, knowing that the mother's death may result, and the mother survives, but the child dies; and of a person who keeps another in wrongful confinement, and being in consequence bound to supply him with everything necessary for his life omits to procure medical advice for him, knowing that he is likely to die for want of it. In commenting upon this section the Commissioners give the following as further instances of their meaning:—

"A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death; this is murder, if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is murder, if A is a guide who had contracted to conduct Z. It is not murder, if A is a person on whom Z has no other claim than that of humanity."

"A savage dog fastens on Z. A omits to call off the dog, knowing that if the dog be not called off it is likely that Z will be killed. Z is killed. This is murder in A if the dog belonged to A, inasmuch as his omission to take proper order with the dog is illegal. (s. 289.) But if A be a mere passer-by it is not murder." (Report 1837, p. 55.)

It is curious that the Code, as at present framed, contains no instance of illegal omissions amounting to culpable homicide. Of course, the absence of such illustrations does not affect the force of the law, since I conceive that the united effect of the present ss. 299 & 32 is exactly the same as that of the old s. 294 as quoted above.

It must not, however, be supposed that every omission or even every improper omission is punishable as illegal. In a recent case

before the Court of Criminal appeal in England, the fa
were stated as follows by Erle, C.J. :—

"The facts of the case are, that the prisoner did not take ordinary procure the aid of a midwife when her daughter was in child-birth. The quence was that the daughter died. Was the not asking for that aid a b of duty for which she is responsible in a Criminal Court? We must take it, that if the prisoner had used ordinary care she could have procured the aid of a midwife. But the person who calls in a midwife usually pays for her assistance. There is no proof here that the prisoner had any means at her disposal for the purpose of paying the midwife. The prisoner cannot, I think, be held criminally responsible for not asking for that aid. I cannot find that this case comes within the principle of any of the cases that have been cited. In cases of imprisonment, when the persons themselves are helpless, the duty of rendering necessary assistance to them is cast on those who have charge of them. The like principle applies to the case of children, who are helpless on account of their tender years. (5 N.W.P. 44.) The case of an apprentice, where a duty of maintenance is imposed by law or contract, is also distinguishable from the present. Here, the daughter of the prisoner was quite beyond the age of childhood. I cannot find any authority for saying that there was such a breach of duty on the part of the prisoner as rendered her liable to conviction for manslaughter." (Reg. *v.* Shepherd, 31 L.J.M.C. 102; L. & C. 147.)

Even if it had been shown that the prisoner had, in fact, had money of her own sufficient to defray the midwife's charges it would, I conceive, have made no difference. There is no legal obligation upon any one to spend money in charity. It may be inhuman, but it is certainly not illegal, to allow a beggar to starve, or a sick man to die for want of medical advice.

And, so, where a mistress was indicted for causing the death of her servant by neglecting to supply her with proper food and lodging, Erle, C.J. said, "The law clearly is, that if a person has the custody and charge of another, and neglects to supply proper food and lodging, such person is responsible, if from such neglect death results to the person in custody. But it is also equally clear that when a person, having the free control of her actions, and able to take care of herself, remains in a service where she is starved and badly lodged, the mistress is not criminally responsible for any consequences that may ensue. The question in the present case is, whether there is evidence that the deceased was reduced to such a state of body and mind as to be helpless and unable to take care of herself, or that she was so under the dominion and restraint of her mistress as to be unable to withdraw herself from her control. If there was substantial evidence to go to the jury upon either of these points the conviction must, of course, be sustained." (Reg. *v.* Smith, L. & C. 607, 624; 34 L.J.M.C. 153.)

Under ss. 460-492 breaches of contract, or illegal omissions, are punishable, whether any injury follows from the omission or not.

Under English law, even where the deceased has voluntarily done the act which caused his death, it will still be culpable homicide if it was done from an apprehension of immediate violence. As, for instance, where, on being attacked, he threw himself into a river, or jumped out of a window, provided the apprehension was well grounded and justified by the circumstances. And, so, it was held to be culpable homicide in a case where the prisoner committed an assault upon the deceased while he was on horseback, and pursued

was riding away, upon which the deceased spurred his ... was thrown by it and killed. (1 Russ. 676; Arch. 538.) ...nciple in all these cases was, that a person who is attacked has ... to make his escape by every possible means, and if his death ...pens from the means to which he is driven, the person by whose ...nlawful act he is compelled to such extremity is responsible for the consequence. But the violence threatened must be such as would fairly warrant the step taken. A man would not be justified in leaping out of a window to avoid having his ear boxed. On the other hand, his conduct should be considered with reference to the state of excitement and alarm in which he was at the moment, and not as if he had time to deliberate what, on the whole, would be most prudent. But where the prisoners were indicted for the murder of two boys, and it appeared that the deceased, having allowed their cattle to stray on the prisoner's fields, were pursued by the latter and fled towards the river, in which they were found drowned the next day, it was held that no crime, under the circumstances, was established. (1 M. Dig. 167, § 434.)

Under s. 299 the above class of cases seems to be excluded. That section appears to assume that the death is caused by the act of the accused, and by an act which he intended or knew to be likely to cause death. This can hardly, without great straining, be said of a death which results entirely from the voluntary and unforeseen act of the deceased himself, and which would never have happened from any act done or intended to be done by the prisoner. The principle of English law is completely different. An English Jurist looks rather to the character of the act than to the intention with which it is done, and holds that death resulting from the negligent performance of a lawful act, or from any performance of an unlawful act, must at the very least be culpable homicide, whatever were the intentions of the agent.

So far was this principle carried that it was held that where a person engaged in an unlawful act undesignedly killed a man, the killing would be murder if the unlawful act were felony, and culpable homicide if only a misdemeanor.

"If a man shoot at another's poultry, with the intent to steal them, and by accident kill a man, it is murder; if without such intent, it is manslaughter; the act of shooting at the poultry being unlawful, but not felonious." (1 Russ. 851, and see Ibid. 849, 852, 856.)

This was certainly pushing the principle to the borders of the ludicrous. Such a case is expressly decided by *Illustration* (c) not to be even culpable homicide, (*ante* p. 246) and see the Report of 1836, pp. 63-65.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily

injury, the person who causes such bodily shall be deemed to have caused the death, alt by resorting to proper remedies and skilful t ment the death might have been prevented.

It is also murder where the prisoners have inflicted a wound which renders necessary a surgical operation, as, for instance, an amputation and the party sinks under the effect of it. (3 M. Dig. 127, § 174.) And, conversely, if a man be wounded, and the wound turn to a gangrene or fever for want of proper applications, or from neglect, and the man die of the gangrene or fever; or if it becomes fatal from the refusal of the party to submit to a surgical operation, in either case the crime of murder is complete, for it is the act of the prisoner which has brought the other into a position in which his death is natural and likely. But where the wound would not have caused death, but it is brought on by improper applications—that is to say, not merely by applications which turn out not to have been the most judicious that might have been employed, but by applications ignorantly administered by unqualified persons—this, according to English law, was considered not to be murder, for the death started from a completely different source, and was not the result of the act done. (Arch. 538; 1 Russ. 700, 701.) The original framers of the Code, however, considered that the question of murder or no murder would turn, not upon the cause of the death, but the object of the wound, and give the instance of a person interested in the death of a young heir giving him a slight wound, knowing that the ignorant and unskilful treatment of those around him would cause it to terminate fatally, and intending such a result. (Report, 1837, p. 58.) The subsequent Commissioners agree with them that such a case, if it could be proved, ought to be treated as murder, and that it would come under the definition of the offence. They consider the case, however, so improbable, that they expressed themselves as

> "Doubtful of the propriety of putting it as a case within the definition, (s. 299) for fear of its leading to a latitude of construction which, under some supposed analogy, might include predicaments quite beyond its scope."

(1st Report, 1846, § 250-253.)

Of course, the want of an illustration in no way takes from the meaning of the Law.

A different case from any of the above is when a wound has been given, and it is suggested that the death has occurred from the unskilful or unnecessary performance of an operation which was intended to cure it. In such a case, Erle, J. said, "I am clearly of opinion, and so is my brother Rolfe, that when a wound is given, which, in the judgment of competent medical advisers, is dangerous, and the treatment which they *bonâ fide* adopt is the immediate cause of death, the party who inflicted the wound is criminally responsible, and, of course, those who aided and abetted him in it." (Reg. *v.* Pym, 1 Cox C.C. 339, cited 1 Russ. 701.)

Explanation 3.—The causing of the death of a

. the mother's womb is not homicide. But ...y amount to culpable homicide to cause the ... of a living child if any part of that child has ...en brought forth, though the child may not have ...reathed or been completely born.

Causing the death of a child in the womb is punishable under s. 315. The Crim. P.C. s. 133 provides that

"The Officer in charge of a Police Station, on receiving notice or information of the unnatural or sudden death of any person, shall immediately give intimation to the nearest Magistrate, and proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make inquiry and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted. The report shall be signed by such Police Officer and other persons, or by so many of them as shall concur therein, and shall be forthwith forwarded to the Magistrate. When there may be any doubt regarding the cause of death, such Police Officer shall forward the body with a view to its being examined by the Civil Surgeon, or other Medical Officers appointed in this behalf by the Local Government, if the state of the whether and distance will admit of its being so forwarded without risk of putrefaction on the road. In the Presidencies of Madras and Bombay it shall be the duty of the head of the Village in like manner to make the inquiry and report as aforesaid."

Murder.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a*) A shoots Z with the intention of killing him. Z dies sequence. A commits murder.

(*b*) A, knowing that Z is labouring under such a disease tha blow is likely to cause his death, strikes him with intention of cau ing bodily injury. Z dies in consequence of the blow. A is guilt of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(*c*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(*d*) A, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

The distinction between murder and culpable homicide not amounting to murder has been very clearly laid down by Sir B. Peacock, C.J., in a recent Bengal case. (1 R.C.C.C.R. 39.) There he said,

"There are, in my opinion, several important distinctions between murder and culpable homicide; an offence cannot amount to murder unless it falls within the definition of culpable homicide, for s. 300 merely points out the cases in which 'culpable homicide is murder.' But an offence may amount to culpable homicide without amounting to murder.

"Culpable homicide is not murder, if the case falls within any of the exceptions mentioned in s. 300. The causing of death by doing an act with the intention of causing death is culpable homicide. It is also murder, unless the case falls within one of the exceptions in s. 300. Causing death with the intention of causing bodily injury to any person, if the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, in my opinion falls within the words of s. 209, 'with the intention of causing such bodily injury as is likely to cause death,' and is culpable homicide. It is also murder, unless the case falls within one of the exceptions. See s. 300, Clause 3.

"Causing death by doing an act with the knowledge that such act is likely to cause death is culpable homicide, but it is not murder, even if it does not fall within any of the exceptions mentioned in s. 300, unless it falls within Clauses 2, 3, or 4 of s. 300; that is to say, unless the act by which the death is caused is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or unless the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death.

"In speaking of acts, I, of course, include illegal omissions.

...re many cases falling within the words of s. 299, 'or with the ...that he is likely by such act to cause death,' that do not fall within ..., or 4th Clauses of s. 300; such, for instance, as the offences described ... 280, 281, 282, 284, 285, 286, 287, 288 & 289, if the offender knows ... act of illegal omission is likely to cause death, and if, in fact, it does ... death. But, although he may know that the act or illegal omission is so ...ngerous that it is likely to cause death, it is not murder, even if death is ...aused thereby, unless the offender knows that it must, in all probability, cause death, or such bodily injury as is likely to cause death, or unless he intends thereby to cause death, or such bodily injury as is described in Clauses 2 or 3 of s. 300.

"As an illustration: suppose a gentleman should drive a buggy in a rash and negligent manner, or furiously along a narrow crowded street. He might know that he was likely to kill some person, but he might not intend to kill any one, or to cause bodily injury to any one. In such a case, if he should cause death, I apprehend he would be guilty of culpable homicide not amounting to murder, unless it should be found, as a fact, that he knew that his act was so imminently dangerous that it must, in all probability, cause death, or such bodily injury, &c., as to bring the case within the 4th Clause of s. 300. In an ordinary cause of furious driving, the facts would scarcely warrant such a finding. If found guilty of culpable homicide not amounting to murder, the offender might be punished to the extent of transportation for ten years, or imprisonment for ten years with fine (see ss. 304 & 59); or if a European or American, he would be subject to penal servitude instead of transportation. It would not be right in such a case that the offender should be liable to capital punishment for murder. The first part of s. 304 would not apply to the case. That applies only to cases which would be murder, if not falling within one of the exceptions in s. 300. If a man should drive a buggy furiously, not merely along a crowded street, but intentionally into the midst of a crowd of persons, it would probably be found, as a fact, that he knew that his act was so imminently dangerous that it must, in all probability, cause death or such bodily injury, &c., as in Clause 4, s. 300.

"From the fact of a man's doing an act with the knowledge that he is likely to cause death, it may be presumed that he did it with the intention of causing death, if all the circumstances of the case justify such presumption; but I should never presume an intention to cause death merely from the fact of furious driving in a crowded street, in which the driver might know that his act would be likely to cause death. Presumption of intention must depend upon the facts of each particular case.

"Suppose a gentleman should cause death by furiously driving up to a Railway Station. Suppose that it should be proved that he had business in a distant part of the country, say at the opposite terminus, that he was intending to go by a particular train, and that he could not arrive at his destination in time for his business by any other train; that at the time of the furious driving it wanted only two minutes to the time of the train's starting; that the road was so crowded that he must have known that he was likely to run over some one and to cause death, would any one under the circumstances presume that his intention was to cause death? Would it not be more reasonable to presume that his intention was to save the train? If the Judge or Jury should find that his intention was to save the train, but that he must have known that he was likely to cause death, he would be guilty of culpable homicide, not amounting to murder unless they should also find that the risk of causing death was such that he must have known, and did know, that his act must, in all probability, cause death, &c., within the meaning of Clause 4, s. 300.

"If they should go further, and infer from the knowledge that he was likely to cause death, that he intended to cause death, he would be guilty of murder and liable to capital punishment."

In short, where the positive intention to cause death is negatived, the difference between murder and culpable homicide is a mere question as to different degrees of probability that death would ensue.

Where death must have been known to be *a* probable result, ble homicide. Where it must have been known to be *the* m ble result, then it is murder. (6 N.W.P. 26; 1 Bomb. L.R.

As in culpable homicide, so on a charge of murder, it lies upon prosecution to make out the knowledge or intention which cons tutes the crime. (4 R.C.C.C.R. 13.) But if the prisoner relies upon any of the exceptions as reducing his guilt, it is for him to show that those exceptions existed in his case. (5 R.J. & P. 40; 1 R.C.C.C.R. 5.)

When culpable homicide is not murder.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisoes :—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

For instance, nothing can well be more galling than for a man to have his house entered by a Sheriff's bailiff, and possibly to have his very bed taken from under a sick wife. But such provocation would not mitigate his guilt if he killed the Sheriff's officer ; and it would make no difference that the proceedings which terminated with arrest were all fraudulent, or even illegal, provided the warrant under which the officer acted was a valid warrant, and provided he acted under it in a legal manner. But the mere fact that an officer is lawfully authorized to do one act does not protect his unlawful acts, so as to deprive a person who assails him in anger at such unlawful acts of the plea of provocation. As the Commissioners say, (1st Report, 1846, s. 227.)

"We apprehend that grave provocation given by anything done under *cover* of obedience to law, or under *cover* of its authority, or by a public servant, or in defence, in *excess* of what is strictly warranted by the law, in point of violence, or as regards the means used, or the manner of using them and the like, would be admissible in extenuation of homicide under this clause. For example, take the case of Wat Tyler referred to in the note to this chapter. (Report 1836, p. 60.) Here was a public officer, a tax-gatherer, who came 'to exercise his lawful powers' in that capacity, but doing so in a manner

...nd highly offensive, Tyler was excited to 'violent passion,' and in ...d him on the spot. The Commissioners upon this say, 'so far, ...uld we be from ranking a man who acted like Tyler with murderers, ... conceive that a Judge would exercise a sound discretion in sentencing a man to the lowest punishment fixed by the law for manslaughter.'"

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(*a*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z who is near him but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

It is not to be supposed that any amount of provocation will reduce the offence of murder to culpable homicide. There must be some proportion between the provocation and the resentment. (1 B.A. Cr. 11.)

As explained above, "the provocation must be grave enough to prevent the offence from amounting to murd violence used must not be "in a cruel or unusual manner."

Hence, where a park-keeper, having found a boy stealing w tied him to a horse's tail and dragged him along the park, and t boy died of the injuries he thereby received, this was held to be murder. So, where two soldiers forced their way into a public house when it was closed at night, and one killed the landlord who was struggling to get them out, this was held to be murder, because the landlord had a right to put them out of the house. (Arch. 544.)

On the other hand, where the provocation has been very violent, killing even with a deadly weapon has been held to be merely culpable homicide. Where, some provoking words being used by a soldier to a woman she gave him a box on the ear, and the soldier immediately gave her a blow with the pummel of his sword on the breast, and then ran after her, and stabbed her in the back, this was at first deemed murder; but it appearing afterwards that the blow given to the soldier was with an iron patten and drew a great deal of blood, the offence was holden to be only culpable homicide. (Ibid.)

It will be observed that the doctrine of Mahometan law which justifies the slaying of an adulterer, when caught by the husband in the very act, is not confirmed here. The rule will, therefore, be that which has always prevailed in the English and Scotch law, by which a death under such circumstances is considered as unlawful, but in consequence of the gravity and suddenness of the provocation is treated as being only culpable homicide and not murder. (Arch. 545; Alison Cr. L. 113.)

According to the law of England, France and America, provocation by words or gestures alone cannot be sufficient to reduce the crime of killing intentionally, or with a deadly weapon, below that of murder. (1 Russ. 784.) Upon this point, however, the framers of the Code say,

"We greatly doubt whether any good reason can be assigned for this distinction. It is an indisputable fact that gross insults by word or gesture have as great a tendency to move many persons to violent passion as dangerous or painful bodily injuries. Nor does it appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of a peculiarly bad heart."

Accordingly, they draw special attention to the fact, under these sections words and gestures are put upon the sam any other provocation. (Report 1837, p. 59.)

The later Commissioners assent to this reasoning, remarking, that

"A discreet Judge would properly reject the plea of provocation by insulting words in one case, while he would as properly admit it in another, according as the party might be shown to belong to a class sensitive to insults of this sort or otherwise." (1st Report, 1846, s. 271.)

Lastly, in all cases where the plea of provocation is set up, it is essential to prove that the act was committed under its influence; not merely, it must be observed, under the effect of the resentment

l by the injury, but in the heat of blood which renders a to judge of the character of his acts or their consequences. the case of a detected adultery, if the injured husband kill amour deliberately and upon revenge, after the fact and sufficooling time, this would undoubtedly be murder. (1 Russ. 724.) ..nere the murder was committed with a knife, which the prisoner had got after the blow was inflicted upon him by the deceased, and they had some conversation, and walked together before the stabbing by the prisoner, Tindal, C.J., told the Jury that

"The question for them was, whether the wound was given by the prisoner while smarting under a provocation so recent and so strong, that he might not be considered at the moment the master of his own understanding; or whether there had been time for the blood to cool and for reason to resume its seat before the wound was given. That in determining this question, the most favourable circumstance for the prisoner was the shortness of time between the original quarrel and the stabbing; but, on the other hand, the weapon was not at hand when the quarrel took place, but was sought for from the distance. It would be for them to say whether the prisoner had shown thought, contrivance, and design in the mode of possessing himself of the weapon, and again replacing it immediately after the blow was struck; for the exercise of contrivance and design denoted rather the presence of judgment and reason, than of violent and ungovernable passion." (1 Russ. 727.) The prisoner was found guilty of murder. (See 4 B.A. Cr. 6.)

As to mistake, accident, legal justification, and self-defence, see *ante* pp. 44, 57, 59, 79.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol, Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Mere words threatening future injury to the person do not constitute such an occasion of self-defence as to bring one who thereupon kills another under the protection of this section. (4 B. Appx. 101.)

Exception 3.—Culpable homicide is not murder, if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law and

causes death by doing an act which he, i faith, believes to be lawful and necessary due discharge of his duty as such public se and without ill-will towards the person whose de is caused.

See 5 N.W.P. 130 *ante* end of Chapter IV.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage, or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth he was incapable of giving consent to his own death; A has, therefore, abetted murder.

Hence a duel, fairly carried out, will now, if death results, only be culpable homicide. Formerly, it would have been murder. But if any unfair advantage were taken, as, for instance, if either party were to fire before the signal was given, or were to fire off more shots than were allowed, this would be murder, for in such a case a greater risk is imposed upon the other party than he had undertaken to bear.

And, so, it was held, that where death supervened upon emasculation, voluntarily submitted to by an adult, the operator was not guilty of murder, but only of culpable homicide. (1 R.C.C.C.R. 12.)

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide, by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the

Culpable homicide by causing the death of a person other than the person whose death was intended.

... is of the description of which it would have ... he had caused the death of the person whose ... he intended or knew himself to be likely to ...use.

Accordingly, where a prisoner intending to kill the husband of a woman, with whom he was carrying on an adulterous intrigue, waylaid him in the dusk, but by mistake killed a third party who came along the road, he was convicted of murder and hung. (3 M. Dig. 125, § 160.)

By the common law of England it was necessary that death should follow within a year and a day after the stroke, or other cause of it. (1 Hale, 428.) This rule is not retained in the present Code. As a matter of evidence, however, it would possibly be acted on, as it is hardly fair to say that an injury has caused death when the death does not supervene for upwards of a year. This is ample time in all ordinary cases, and the result of a different rule would be, that a party who had inflicted upon another an injury which permanently weakened his health, might be indicted for murder if the injured man died ten years afterwards.

Lord Hale lays it down as a rule, never to convict any person of murder or manslaughter unless the fact were proved to be done, or at least the body found dead; and he mentions a case in which a man was executed for the murder of another, who afterwards returned from sea. (2 Hale, 290.) And, accordingly, where a woman was indicted for the murder of her bastard child, and it appeared that she had been seen with the child at 6 P. M., and arrived at another place without it about 8 P. M., and the body of a child was found in the river, near which she must have passed, but it could not be identified as her child, and the evidence was rather the other way, it was held that she was entitled to an acquittal; the evidence rendered it probable that the child found was not hers, and with respect to that which really was her child, the prisoner could not by law be called upon, either to account for it, or to say where it really was, unless there was evidence to show that it was actually dead. (1 Russ. 771.)

On the other hand, convictions have been sustained, though the body was not found, where there was very strong direct evidence to the murder, or where the evidence, though it fell short of actual identification of the body, led almost conclusively to the belief that something found was the body.

"Thus, where the prisoner, a mariner, was indicted for the murder of his captain at sea, and a witness stated that the prisoner had proposed to kill the captain, and that the witness, being afterwards alarmed in the night by a violent noise, went upon deck and there observed the prisoner take the captain up and throw him overboard into the sea, and that he was not seen or heard of afterwards, and that near the place on the deck where the captain was seen a billet of wood was found, and that the deck and part of the prisoner's dress were stained with blood; the Court, though they admitted the general rule of law, left it to the Jury to say, upon the evidence, whether the deceased was not killed before his body was cast into the sea; and the Jury being of that opinion the prisoner was convicted, and (the conviction being unanimously approved of by the Judges) was afterwards executed." (1 Russ. 770.)

302. Whoever commits murder shall b[...]ished with death, or transportat[...] life, and shall also be liable to fin[...]

Punishment for murder.

It is hardly necessary to observe that no Statute of Limitations exists in criminal law. But where prisoners were convicted of murders, committed 19 and 13 years ago, the Court remitted the extreme penalty of the law, considering that it was not called for as a public example. (Mad. F.U. 196 of 1851 ; 226 of 1852.)

As to finding a verdict of manslaughter or any minor offence, where the facts charged as murder do not make out that offence, see Cr. P.C., s. 457 and Act X of 1875, s. 22.

Punishment for murder by a life-convict.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death ; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Punishment for culpable homicide not amounting to murder.

304A. Whoever causes the death of any person, by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. (Act XXVII of 1870, s. 12.)

Causing death by negligence.

See Act XXVII of 1870, s. 13, *ante* p. 116.

This section is intended to cover cases different from those provided for by the sections as to culpable homicide or hurt, and more aggravated than those already provided for by ss. 336-338. To make out

the offences of causing hurt, or grievous hurt (ss. 321, 322), it is necessary to show that the accused had the intention of causing, or the knowledge that his act was likely to cause, the particular injury which actually followed. A similar knowledge or intention is required to constitute the offence of culpable homicide, whether amounting to murder or not. Sections 336-338 apply to cases where no such knowledge or intention can be affirmed, but where there is an amount of rashness or negligence which causes danger to life or safety, though unattended with actual results, or only producing hurt or grievous hurt. The section now under consideration applies to the same class of acts, resulting in actual death.

It is important that prosecutors should not charge, and that Judges and Juries should not convict under this section, where the offence is really the totally different one of culpable homicide. This was pointed out in a recent case before the High Court of Madras. (7 Mad. H.C. 119.) The Judges said,

"In this case the prisoner killed his own mother by beating and kicking her. The Sessions Judge finds that the death resulted from a brutal beating and kicking, but he acquits of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death. This is, it is manifest, no ground for acquitting of culpable homicide not amounting to murder; with such knowledge the act would be murder. (P.C., s. 300, cl. 2.) The question for the Judge was, whether the act was done with the knowledge of causing bodily injury which was likely to cause death. The Judge finds the brutal beating and kicking and dragging by the hair of the head of an old woman of 60 by a powerful man, who so acted without the smallest provocation. The causal connection between the brutal assault and the death is found to be undoubted, but the Sessions Judge has convicted the prisoner under the new section of causing death by a rash act. This section is, in our opinion, wholly inapplicable to the facts of this case. Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they may not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal or mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. The imputability arises from the neglect of the civil duty of circumspection. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act, or series of acts, themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness because he has carried the experiment too far, results from an obvious and dangerous misconception. As this is neither a case of rashness nor of negligence, it becomes unnecessary to consider whether in any case a conviction under this section can properly follow, where the rashness, or negligence, amounts to culpable homicide. It is clear, however, that if the words 'not amounting to culpable homicide' are part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death." (Acc. 5 N.W.P. 38, 235; 1 Mad. L.R. 224.)

On the other hand neither this section, nor those as to culpable homicide, apply to cases where the death has arisen, not from the negligent or rash mode of doing the act, but from some result supervening upon the act, which could not have been anticipated. For instance, where the accused gave the deceased a push, which

caused him to fall, and in the fall he broke his toe, and subsequently died of tetanus; it was held no offence but that of criminal force had been committed. (1 Mad. L.R. 224.)

On the same ground, death caused by an injury voluntarily inflicted in an excessive exercise of the right of self-defence, should be charged as culpable homicide, and not as a rash or negligent act under s. 304A. (Section 300, Exception 2, *ante* p. 257; 2 R.C.C.C.R. 40.)

Many of the cases of unskilful medical treatment which in England are dealt with as manslaughter would be properly punishable under ss. 304A & 336-338.

For instance, where the prisoner, who was a publican and agent for the sale of Morison's pills, was indicted for manslaughter, by administering a large quantity of those pills to the deceased. Several medical men gave as their opinion that medicine of the violent character of which the pills were composed, could not be administered to a person in the state in which the deceased was without accelerating his death, Lord Lyndhurst, C.B. said,

"I agree that in these cases there is no difference between a licensed physician or surgeon, and a person acting as physician or surgeon without a license. In either case, if a party, having a competent degree of skill and knowledge, makes an accidental mistake in his treatment of a patient, through which mistake death ensues, he is not thereby guilty of manslaughter; but if, where proper medical assistance can be had, a person totally ignorant of the science of medicine takes on himself to administer violent and dangerous remedy to one labouring under disease, and death ensues in consequence of that dangerous remedy having been so administered, he is guilty of manslaughter." (1 Russ. 697.)

Under the Penal Code, also, there would be no difference between a regular and an irregular practitioner, unless so far as a knowledge of consequence might be implied in the one case which would not be implied in the other. A rash or negligent act which was known to be likely to endanger human life, would be punishable under s. 325 if it actually caused dangerous hurt, or under s. 304A if life was lost by it. But if a person who had no medical knowledge were to give chloroform, for instance, to relieve pain, in a case in which a physician would know that death would be the result, this might be a rash act under s. 304A, but would certainly not be culpable homicide, or voluntarily causing grievous hurt. Moreover, the same act might be rash under one set of circumstances, and innocent under a different set. The most ignorant person might with propriety attempt a surgical operation when all professional aid was unattainable, though such an attempt would be highly criminal if a surgeon was within reach.

The negligence which causes death must, as I have shown above (*ante* p. 222), be the personal neglect or default of the defendant himself. But where an engineer left an engine in charge of a boy, who told him he could not manage it, and, in consequence of its mismanagement a loss of life took place, this was held to be manslaughter; for it was an act of personal misconduct on the part of the engineer. (Reg. *v.* Lowe, 3 C. & K. 123.) Such an act would now be punishable under s. 304A, and would be culpable homicide if the death was a probable result of the mismanagement of the machine.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide of child or insane person.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of suicide.

In a case of Suttee, some of the prisoners actually set fire to the pile, while one did not co-operate in causing the death of the widow, but took an active part in causing her to return to the pile, when she had left it, after being partially burnt. The Bengal High Court held that the former prisoners were guilty of culpable homicide, but the latter only of abetment of suicide. They said,

"Abetment of suicide is confined to the case of persons, who aid and abet the commission of suicide by the hand of the person himself who commits the suicide. When another person, at the request of or with the consent of the suicide has killed that person, he is guilty of homicide by consent which is one of the forms of culpable homicide." (1 R. J. & P. 174.)

307. Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Attempt to murder.

"When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death." (Act XXVII of 1870, s. 11.)

Attempts by life-convicts.

Illustrations.

(*a*) A shoots at Z with intent to kill him, under such cir-

cumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b*) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c*) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in the section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this section.

(*d*) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table, or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

To constitute an offence under this or the following section, the prisoner must be convicted of everything which would make up the crime of murder, or of culpable homicide not amounting to murder except the death itself. There must be an act done which could cause death, and it must have been done with the intention that it should cause death, or with the knowledge that it would necessarily, naturally, or probably cause death. Hence, where the prisoner presented a rifle at his officer, but it was struck up before he had drawn the trigger, and the rifle was found to be loaded but not capped, it was held by the Bombay High Court that he could not be convicted under s. 307, although when the act was done the prisoner believed the gun was capped. Couch, C.J. said,

"It appears to me, looking at the terms of this section, as well as at the illustrations to it, that it is necessary, in order to constitute an offence under it, that there must be an act done under such circumstances that death might be caused if the act took effect. The act must be capable of causing death in the natural and ordinary course of things; and if the act complained of is not of that description, a prisoner cannot be convicted of an attempt to murder under this section."

"The illustrations given bear out this view. One is that of a man firing a loaded gun; and, another, is that of a man placing food mixed with poison on another's table. Both these acts are capable of causing death; but in the present case, although the act was done with the intention of causing death, and was likely in the belief of the prisoner to cause death, yet in point of fact it could not have caused death, and it, therefore, does not come within that section." (Reg. *v*. Cassidy, 4 Bomb. H.C. Cr. 17.)

The judgment of the Court seems to have proceeded entirely on the ground that the rifle was uncapped. But it seems to me the decision should have been just the same, even though the gun had been capped, provided the prisoner had not tried to pull the trigger. The act which is indictable under ss. 307 or 308 must be the act which would have caused the death, had death ensued. But the mere presenting of the gun could never have caused death, any more than the loading of it, unless it was discharged.

On the other hand, in this very same case it was held that the prisoner was properly convicted of an attempt to commit murder under s. 511. Since "the presenting of the gun, under the circumstances, was an act of such an approximate nature as to bring the prisoner

within the words of s. 511." (Ibid. p. 23.) The difference between the two cases is, that under ss. 307 or 308 the prisoner must have done the final act, which would have caused death. Under s. 511, it is sufficient if he has done an act towards the death.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge and under such circumstances, that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Attempts to commit suicide.

309. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, and shall also be liable to fine.

See *post*, note to s. 511.

Thug.

310. Whoever at any time after the passing of this Act shall have been habitually associated with any other or others for the purpose of committing robbery or child stealing by means of or accompanied with murder, is a Thug.

Punishment.

311. Whoever is a Thug shall be punished with transportation for life, and shall also be liable to fine.

As to the jurisdiction over Thugs, see Cr. P.C., s. 68.

OF THE CAUSING OF MISCARRIAGE, OF INJURIES TO UNBORN CHILDREN, OF THE EXPOSURE OF INFANTS, AND OF THE CONCEALMENT OF BIRTHS.

Causing miscarriage.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

Causing miscarriage without woman's consent.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by an act done with intent to cause miscarriage.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment abovementioned.

If act done without woman's consent.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

In a recent case in England a man was indicted for murder of a woman. It appeared that she, being pregnant, requested him to procure her an abortion, and that he, in consequence, procured for her a poisonous drug. He knew the purpose for which she wanted it and gave it to her for that purpose, but he was unwilling that she should use it and he was not present when it was taken. The woman died from the effects of the poison. The Court held that the conviction could not be sustained, saying that "it would be consistent with the facts of the case that he hoped and expected that she would change her mind, and would not use the drug." (Reg. *v.* Fretwell, L. & C. 161; 31 L.J.M.C. 145.)

Under similar circumstances I conceive that no charge would be maintainable under s. 314, or under ss. 312, 313, or 315. But the prisoner would be guilty of abetting her to commit the offence specified in s. 312. See s. 107, clause third, explanation 2.

Act done with intent to prevent a child being born alive or to cause it to die after birth.

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Under English law, if a child is born alive, but dies by reason of the potion or bruises which it received in the womb from a person who administered the potion, or inflicted the bruises for the purpose of procuring a miscarriage, it would be murder, unless the act of procuring a miscarriage was, under the circumstances of the cause, lawful. (Arch. 517.)

Causing death of a quick unborn child by an act amounting to culpable homicide.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of

either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die, but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

See note to s. 307, *ante* p. 264.

Exposure and abandonment of a child under twelve years by parent, or persons having care of it.

317. Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide as the case may be, if the child die in consequence of the exposure.

In a recent case the following facts arose. A, the mother of a newly-born child, being herself too ill to move, sent B to expose it. It was held by Scotland, C.J., that A could not be convicted under this section as she had not actually exposed the child, nor B, as she was not the mother. Also, that neither A nor B could be indicted for abetting the other, since as neither could have committed the offence there could be no abetment by the other. (Reg. *v.* Beejoo Bee, 1st Mad. Sess. 1869.) Of course, a person who has the custody of a child merely for the purpose of exposing it, cannot be indicted as a person "having the care of such child."

Where the mother of a child packed it up carefully in a hamper, and sent it off by train to the address of its father, where it was delivered alive, it was held that this came within the words of the English Statute, which makes it penal to "abandon or expose any child under the age of two years, whereby the life of such child shall be endangered." (Reg. *v.* Falkingham, 1 L.R.C.C. 222.) And, so, where a mother who was living apart from her husband left the child at his door, and he refused to take it in, saying "it must bide there for what he knew and then the mother ought to be taken up for the murder of it;" he was convicted under the same Statute. (Reg. *v.* White, 1 L.R.C.C. 311.)

Concealment of birth by secret disposal of dead body.

318. Whoever by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Where a woman put the dead body of her child over the wall of a yard into a field through which there was no thoroughfare, and where the body was not likely to be found by any person resorting to the field in their ordinary occupation, this was held to come within the terms of the English Statute which requires that the concealment should be by a "secret disposition of the body." (Reg. *v.* Brown, 1 L.R.C.C. 244.)

It is necessary for a conviction under this section that the child should have arrived at such maturity that it might have been born alive. (4 Mad. H.C. Rul. 63.)

OF HURT.

Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

Grievous hurt.

320. The following kinds of hurts only are designated as "grievous:"—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Where a man was so much injured that he had to go to hospital, but left it perfectly cured on the twentieth day after the hurt, it was held that this day would count as one of the twenty days during which he had been unable to follow his ordinary pursuits. (Reg. *v.* Shaik Bahadur, Scotland, C.J., 2nd Madras Sessions, 1862.)

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Voluntarily causing grievous hurt.

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himseif to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A's intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

I have already frequently drawn attention to the maxim that a man is assumed to intend the natural consequences of his acts. (See *ante* pp. 103, 188, 246, 252.)

The word "voluntarily" is defined by s. 39, *ante* p. 25. It will be observed that the only thing which has to be considered under that definition is the state of the prisoner's mind at the moment the act is committed. If he then intended, or knew that he was likely, to cause grievous hurt, the suddenness of the intention will be immaterial. A voluntary act is not to be confounded with a premeditated act. In a recent case a prisoner was indicted for a common assault, and also for maliciously inflicting grievous bodily harm. The jury found that he was "guilty of an aggravated assault, but without premeditation, and that it was done under the influence of passion." The Court held that this was a sufficient verdict of guilty upon the more serious charge. They said,

"We think this assault was intentional in the understanding of the law, though committed without premeditation and under the influence of passion." (Reg. *v.* Sparrow, Bell 298 ; 30 L.J.M.C. 43.)

Where an act which would have been culpable homicide, had death ensued, only causes grievous hurt, the offender will always be punishable under this section. Because, in order to come under s. 299 the criminal must have known that he was likely to cause death, and any injury which is likely to cause death is grievous hurt (s. 321, cl. 8); therefore, he must not only have caused grievous hurt, but known that he was likely to cause it. But the converse does not follow ; and if a person intending to cause grievous hurt actually causes death, it is not necessary that he should be guilty of culpable homicide, because many species of grievous hurt are not likely to cause death. If, therefore, it could be shown that the offender intended merely to break a finger and did break it, but an attack of heart disease was brought on, of which the sufferer died, here the knowledge necessary to constitute culpable homicide would be wanting, and a conviction could only be had under s. 322.

Punishment for voluntarily causing hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

See as to this section, note to s. 277, *ante* p. 222.

Of course causing hurt is not punishable where it is lawful. As, for instance, the moderate chastisement of a child by its parent, or of a scholar by its teacher. (Arch. 568.) A master is not authorized to beat his servant, but he may inflict moderate chastisement upon his apprentice, to whom he stands in the position of a parent (Act XIX of 1850, s. 14); so, also, from the necessity of the case, the master of a merchant ship may punish his seamen. The law upon

this point is laid down by Lord Stowell (Agincourt, 1 Hagg. Adm. 272) in the following words:—"It has hardly been disputed, that, in a case of gross misbehaviour, the master of a merchant ship has a right to inflict corporal punishment upon the delinquent mariner; that right must be supported by the law of England, which is the proper authority for fixing the limits within which one subject of this realm has a right to inflict corporal suffering upon another. Upon that ground I dismiss all reference to authorities of the Foreign Maritime law, and I regret that so little upon this subject is to be found in our own. The statute relating to merchant seamen is silent upon it (see 17 & 18 Vict., s. 104, s. 239 *et seq.*); the only authorities are supplied by the decisions of the Courts of law, acting upon considerations of necessity and just discretion, and upon such grounds I think the following rules may be considered as sufficiently established. In the first place, that the punishment must be applied with due moderation. It is asserted in some well considered books that the law gives the same authority to the captain of a merchant ship to chastise his mariners for misbehaviour as a master possesses over his apprentices; meaning, that it is inherent in him, upon the same grounds of necessity and sound discretion in one case as in the other, not certainly to be used exactly in the way of an equal measure of punishment, because the apprentice is generally a youth of comparatively tender years, and whose acts of misbehaviour can hardly produce the same destructive consequences as may attend the negligence of the mariner—an experienced person, of confirmed strength, capable of sustaining a severer infliction than could properly be applied to a stripling, and whose acts, even of negligence, may draw after them consequences fatal to all the lives and all the property on board a vessel. It is hardly necessary to add, as a corollary, that in all cases which will admit of the delay proper for inquiry, due inquiry should precede the act of punishment; and, therefore, that the party charged should have the benefit of that rule of universal justice of being heard in his own defence. A punishment inflicted without the allowance of such benefit is in itself a gross violation of justice. There are cases, undoubtedly, which neither require nor admit of such a deliberate procedure. Such are cases where the criminal facts expose themselves to general notoriety by the public manner in which they are committed, or where the necessity occurs of immediately opposing attempted acts of violence by a prompt re-action of lawful force, as in the disorders of a commencing mutiny; these are cases that speak for themselves, and are of unavoidable dispensation. It may be matter of prudence, but is not matter of strict obligation, in vessels of this kind (though I understand it to be so in the ships of the East India Company), that the captain should communicate with other officers of the vessel; nor do I find that any particular mode or instrument of punishment has received a particular recognition; that must be left to the common usage practised in such cases, and to the humane discretion of the person who has right of commanding its application."

"The defence opposed to a charge of cruelty, such as is alleged to have been practised, may consist in a total disapproval that any such cruelty was practised, or may be a justification of it by proofs of the misconduct that provoked it; and that misconduct may be confined

to an offence immediately preceding, or may likewise include similar offences antecedently committed, and which, upon the recurrence of them in the particular case, will justify the punishment as a preventive measure, to guard in future against the inconveniences that may reasonably be expected to attend a repetition."

The law laid down in the above case was affirmed by Holloway, J. as forming a good justification to a charge under the Penal Code. (Reg. *v.* Irvine, *post* note to s. 340, p. 280.)

See as to the summary jurisdiction of the Magistrates of the District over this offence, Crim. P.C., s. 222.

Voluntarily causing hurt by dangerous weapons or means.

324. Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Firing into a crowd with intent to wound some one, supports an indictment which alleges an intent to wound the person who was actually injured. (Reg. *v.* Fretwell, 33 L.J.M.C. 128; L. & C. 443.)

It is, of course, not necessary for a conviction under this section that the manner in which the weapon has in fact been used should be likely to cause death.

That such a misconception has actually occurred is the only reason why I quote authority to guard against its occurring again. (7 Mad. H.C. Rul. 11.)

Punishment for voluntarily causing grievous hurt.

325. Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See Act XVIII of 1862, s. 14 *supra.*

326. Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence (*see* s. 40, *ante* p. 25), shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property or to constrain to an illegal act.

328. Whoever administers to, or causes to be taken by any person, any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or facilitate the commission of an offence (*see* s. 40, *ante* p. 25), or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description

Causing hurt by means of poison, &c., with intent to commit offence.

for a term which may extend to ten years, and shall also be liable to fine.

A man placed in his toddy pots juice of the milk bush, knowing that if taken by a human being it would cause injury, and with the intention of detecting an unknown thief who was in the habit of stealing his toddy. The toddy was drunk by some soldiers who purchased it from an unknown vendor. Held that he was rightly convicted under this section of "causing to be taken an unwholesome thing." (5 Bomb. C.C. 59.)

In a recent case under a similar English Statute, where it appeared that the prisoner had administered a drug to a female with intent to excite her sexual passions, in order that he might have connection with her, the conviction was affirmed. (Reg. *v.* Wilkins, 31 L.J. M.C. 72; L. & C. 89.) But the offence of administering a drug is not committed where the accused has merely procured the drug at the request of another, who took it herself, although the drug was given to her with the knowledge that it would be taken, and for that purpose. (Reg. *v.* Fretwell, 31 L.J.M.C. 145; L. & C. 161.) Nor, as I conceive, could it be said under such circumstances that the accused had caused it to be taken. Romeo might have been indicted under this section, but not the Apothecary.

The words "other thing" must be read "other unwholesome thing." Hence, administering a substance, as to whose nature no evidence was given, which was intended to act as a charm, was held to be no offence. (1 W.R.C.C. 7.)

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence (*see* s. 40, *ante* p. 25), shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort confession,

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any inform-

or to compel restoration of property.

ation which may lead to the detection of an offence (*see* s. 40, *ante* p. 25), or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(*a*) A, a police officer, tortures B in order to induce Z to confess that he had committed a crime. A is guilty of an offence under this section.

(*b*) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c*) A, a revenue officer, tortures B in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d*) A, a Zemindar, tortures a ryot in order to compel him to pay his rent. A is guilty of an offence under this section.

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence (*see* s. 40, *ante* p. 25), or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to deter public servant from his duty.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

Voluntarily causing hurt on provocation.

See note to s. 277, *ante* p. 222.

The meaning of this and the following section of course is, that if a person who has received provocation assails the person who has

given the provocation, he is only liable to a light punishment. But if, while out of temper in consequence of the provocation, he were to attack an innocent person, or to run *amuck* generally, like a Malay, the previous provocation would be no excuse. I should not have thought it necessary to point this out, but that a case occurs in which the Magistrate seems to have put precisely the opposite construction upon the section. (1 Bomb. H.C. 17.)

Causing grievous hurt on provocation.

335. Whoever causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand Rupees, or with both.

Explanation.—The last two sections are subject to the same provisoes as Exception 1, Section 300.

Punishment for act which endangers life or the personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty Rupees, or with both.

Accordingly, it was held that a person who sends an article of a dangerous nature by a carrier was bound to take reasonable care that its nature should be communicated to those who had to carry it. And where a vessel containing nitric acid was so delivered without express notice of its contents, and it burst and injured the carrier, the sender was held to be responsible for the consequences. (Farrant *v.* Barnes, 31 L.J.C.P. 137; 11 C.B.N.S. 552.)

See note to s. 277, *ante* p. 222; and also note to s. 304A, *ante* p. 261.

Causing hurt by an act which en-

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the per-

dangers life or the personal safety of others.

sonal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred Rupees, or with both.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand Rupees, or with both.

Causing grievous hurt by an act which endangers life or the personal safety of others.

WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful restraint.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Wrongful confinement.

Illustrations.

(*a*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b*) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Where a Superintendent of Police illegally wrote a letter to a person directing him to present himself before a Magistrate, and sent two constables to accompany him, and prevent him from speaking with any one, this was held to constitute a wrongful imprisonment at civil law, and, of course, would have been a wrongful confinement under the above section. The Court said,

"It is manifestly not necessary to constitute imprisonment that there should be a continuous application of superior physical force. In the felicitous language of Mr. Justice Coleridge, 'it is one part of the definition of freedom to be able to go withersoever one pleases, but imprisonment is something more than the loss of this power; it includes the notion of restraint within some limits defined by will or power exterior to our own.' (Bird *v.* Jones, 7 Q.B. 742.) It is quite clear, therefore, that the retaining of a person in a particular place, or the compelling him to go in a particular direction, by force of an exterior will, overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of him who exercises that exterior will." (2 Mad. H.C. 396.)

And, so, it has been held, that a Police officer who detains a person for one single hour, except upon some reasonable ground justified by all the circumstances of the case, is guilty of wrongful confinement, and that he was not protected by s. 152 of the Crim. P.C. which authorizes an officer to detain an accused person for 24 hours without sending him before a Magistrate. (2 R.C.C.C.R. 70.)

A person who puts in motion a ministerial officer who confines another, will be guilty of the wrongful confinement, according as the confinement was his act or that of the officer. If he states his case to the officer, who thereupon arrests the complainant, this may be a wrongful confinement by the officer, but will not be such by the informant, even though the latter signs the charge sheet. (Gringham *v.* Willey, 4 H. & N. 296; 28 L.J. Ex. 243.) But if the Police officer absolutely refuses to take the person into custody, unless the informant desires him to do so, then the informant will be guilty of the wrongful confinement, if any such there is. But when the person states his case to a judicial officer, who thereupon, acting on his own judgment, commits the accused to prison, the informant may be guilty of a malicious charge under s. 211, but not of wrongful confinement. (Austin *v.* Dowling, 5 L.R.C.P. 534.)

In the case of Reg. *v.* Irvine (1st Mad. Sess. 1867) there were two indictments against the captain of a ship for wrongfully confining the mate and the carpenter. Holloway, J., read to the jury the law laid down by Lord Stowell in the case of the Agincourt (*ante* p. 272), and told them that the captain of a ship had, from the necessity of the case, considerable powers extending in the case of disobedient mariners to the infliction of corporal punishment. That his powers

a fortiori extended in case of necessity to what would, but for those powers, be wrongful restraint. He must, however, be restricted by the necessity of the occasion, and for determining upon that necessity, the condition of the ship, in which a whole watch had refused to work, was very material matter for their consideration, but that an act of restraint or confinement, legal in its inception, would become wrongful if the mode used was improper, or the continuance longer than the need demanded. The question of the necessity was not to be too nicely weighed, according to the calm judgment which men in cool blood would form after the event, but by a consideration of the occurrences, as they would appear to a reasonable man placed in the situation of the captain.

Punishment for wrongful restraint.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

See note to s. 277, *ante* p. 222.

Punishment for wrongful confinement.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

Wrongful confinement for three or more days.

343. Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Wrongful confinement for ten or more days.

344. Whoever wrongfully confines any person for ten days or more shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement of person

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been

for whose liberation a writ has been issued.

duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Code.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement in secret.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal or to give any information which may facilitate the commission of an offence (*see* s. 40, *ante* p. 25), shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting property, or constraining to an illegal act.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence (*see* s. 40, *ante* p. 25), or misconduct, or for

Wrongful confinement for the purpose of extorting confession, or of compelling restoration of property.

the purpose of constraining the person confined, or any person interested in the person confined, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give any information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

OF CRIMINAL FORCE AND ASSAULT.

349. Force. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

350. Criminal force. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to

cause, or knowing it be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to "use criminal force" to that other.

Illustrations.

(*a*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z, and if he has done so without Z's consent in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has, therefore, caused force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(*c*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has, therefore, used force to Z; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has, therefore, intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby frighten or annoy her, he has used criminal force to her.

(*g*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes

such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has, therefore, intentionally used force to Z, and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(*h*) A incites a dog to spring upon Z without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

351. Assault. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

An assault is an attempt to commit a forcible crime against the person of another. Mere words can never amount to an assault, but any acts or gestures which indicate such an attempt, with a present possibility of carrying out the intention, are sufficient. And words may give a meaning to the gestures which accompany them, so as either to attach to those gestures the character of an assault, or deprive them of that character. (1 Bomb. H.C. 205.) Striking at another with a stick, or the hand, though the blow does not reach his

person—throwing anything at him, though it miss its aim—presenting a loaded gun, within the distance to which it will carry, are all assaults. But threatening to strike another at such a distance that he cannot by possibility be reached, is not. Nor is the administering a deleterious drug an assault, though it was once ruled otherwise. (Arch. 566-7.)

Criminal force is an assault fully completed. No violence is necessary, if the proceeding is in itself of a hostile or insulting character.

"To beat, in the legal acceptation of the word, means not merely to strike forcibly with the hand, a stick, or the like, but includes every touching or laying hold (however trifling) of another's person or clothes, in an angry, revengeful, rude, or insolent manner; as, for instance, thrusting or pushing him in anger, holding him by the arm, spitting in his face, jostling him out of the way, striking a horse upon which he is riding, whereby he is thrown, &c." (Ibid.)

Punishment for using criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence—or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant—or

See *ante*, note p. 254.

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

See *ante*, pp. 255, 256. Nor will the act amount to criminal force where it is such as the law permits. As, for instance, the moderate

chastisement of a child by its parent or a scholar by its teacher. (Arch. 568.) A master is not authorized to beat his servant. But a master is entitled to inflict moderate chastisement upon his apprentice, to whom he stands in the position of a parent. (Act XIX of 1850, s. 14.)

See note to s. 277, *ante* p. 222.

353. Whoever assaults or uses criminal force to any person, being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Using criminal force to deter a public servant from discharge of his duty.

Resistance to a public officer who is attempting to search a house without the proper written order authorising him to do so, is not punishable under this section. (7 N.W.P. 209.)

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or use of criminal force to a woman with intent to outrage her modesty.

A criminal who is a second time convicted of this offence is also liable to whipping. (Act VI of 1864, s. 4.)

The want of consent is essential to either an assault or criminal force. And there must be some evidence of want of consent. (Reg. *v.* Fletcher, 1 L.R.C.C. 39.) The consent of a child under 12 years of age is immaterial. (See note to s. 90, *ante* p. 73.) Practically, however, if a child consented to what would otherwise be an indecent assault, I do not think there could be a conviction under this section. Mere indecency is not an indictable offence, and if the child consented to an act of mere indelicacy it could not be said that it was likely to "cause injury, fear, or annoyance," within the meaning of s. 350. Nor does the case seem to be affected by the recent decision in Reg. *v.* Lock (2 L.R.C.C. 10); there it was held that the prisoner was properly convicted of an indecent assault on two boys of eight years old, the jury having found that they merely submitted to the acts, being ignorant of what was being done, but that they did not

actively consent. But, under English law, any touch is an assault if the person touched does not consent. Under Indian law it is only criminal if it is done "in order to the committing of any offence," or to "cause injury, fear, or annoyance." But if the child were under 10 years of age, and the prisoner were trying to have sexual intercourse with her, then her consent would be immaterial. For the attempt, if successful, would be rape (s. 375), and, therefore, if unsuccessful, would be punished under s. 511.

Assaults or criminal force with intent to dishonour a person, otherwise than on grave provocation.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempting to commit theft of property carried by a person.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempting wrongfully to confine person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

Assaulting or using criminal force on grave provocation.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both.

Explanation.—The last section is subject to the same explanation as Section 352.

Persons convicted of rioting, assault, breach of peace, or abetting the same, or of assembling armed men, or of taking other unlawful measures with the view of committing such acts, may be directed to enter into engagements to keep the peace, either on their own personal recognizance or with securities. Where the conviction is by an officer not exercising the powers of a Magistrate he may report the case to the Magistrate of the District or other officer exercising such power, who may deal with the case as if the conviction had been before himself. (Cr. P.C., ss. 489-490; Act X of 1875, s. 140.) But such report must be made forthwith, and as part of the proceedings connected with the conviction. (Crim. P.C. 122 of 1864, Scotland, C.J. & Frere, J.)

So, parties may be summoned to shew cause why they should not be bound over to keep the peace, upon credible information being given to a Magistrate that a breach of the peace is likely to take place (Cr. P.C., s. 491); and in case of non-compliance with the order the person may be committed to jail. (Ibid., s. 497.) His confinement is only to last till he complies with the order, or, in case of continued disobedience, for one year. (Ibid., s. 498.) But this period may be extended for a further period of one year by the Court of Sessions upon a report and reference by the Magistrate who committed him. (Ibid., s. 499.)

A statement contained in an official report of a Subordinate Magistrate, though not made with the view of having security exacted, is "credible information within the meaning of s. 491" (Crim. P.C. 122 of 1864), and will warrant the issuing of a summons for the appearance of the party. But it is not such evidence as will justify the Magistrate in making an order under s. 497. That order can only be made after a judicial investigation, upon evidence taken in the presence of the party charged, giving him the opportunity of cross-examining the witnesses. (4 B.F.B. 46; 6 Bomb. C.C. 1; Cr. P.C., s. 491, Exp. I.)

Magistrates may also discharge any recognizance or surety on sufficient grounds shown (Cr. P.C., s. 500), and may relieve the surety from further liability by enforcing appearance and surrender of the person for whom security had been given, and then calling upon him to enter into fresh recognizances, or to give fresh security as at first. (Ibid. 501.)

OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOR.

359. Kidnapping is of two kinds; kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent

Kidnapping from British India.

on behalf of that person, is said to kidnap that person from British India.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Kidnapping from lawful guardianship.

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Under this section, it will be observed, the consent of the girl is immaterial, and neither force nor fraud form elements in the offence, as they do under s. 362. (2 W.R.C.C. 5.) In a very recent case under the English Statute, which is substantially the same as the present section, it appeared that the prisoner asked the girl to go out with him, to which she consented, and they remained away from her home for three days, visiting places of public entertainment by day and sleeping together by night. They then departed, he telling her to go home. The father of the girl swore that she was away without his knowledge and against his will. The girl went of her own wish, and the jury found that the prisoner had no intention of keeping her permanently away from her home. The conviction was affirmed. The Court said,

"The Statute was passed for the protection of parental rights. It is perfectly clear law that any disposition of the girl, or any consent or forwardness on her part, are immaterial on the question of the prisoner's liability under this section. The difficulty arises on the point whether the prisoner has taken her out of the possession of her father within the meaning of the Statute. The prisoner took the girl from her father, from under his roof and away from his control, for three days and nights, and cohabited with her during that time, and placed her in a condition quite inconsistent with her being at the time in her father's possession. We think that in these facts there is enough to justify the jury in finding that he took her from the possession of her father, even though he intended her to return to him. The offence under this enactment may be

complete almost at the instant when the girl passes the threshold of her father's house, as where the facts show that the man who takes her away has an intention of keeping her permanently. We do not mean to say that a person would be liable to an indictment if the absence of the girl whom he takes away is intended to be temporary only and capable of being explained, and not inconsistent with her being under the parental control. All we say is that there is in the present case sufficient evidence for the jury to act upon." (Reg. *v.* Timmins, 30 L.J.M.C. 15; Bell, 276.)

On the other hand, it was ruled that no offence had been committed under this section where the girl had actually run away from and was out of the possession of her father, when the enticement took place, (5 R.J. & P. 152), or where she was at the time living in the house of a person who was not her guardian, but to whose son she was engaged. (2 N.W.P. 286.) And so, where the indictment charged that she was allured out of the possession of her mother, the fact being that her mother refused to allow the daughter to live with her, but had sent her to reside with her grandmother, under whose care she supposed the girl to be. (Reg. *v.* Burrell, L. & C. 354; 33 L.J.M.C. 54.) And, similarly, where the prisoner met a girl in the street going to school, and induced her to go with him to a town some miles distant, where he seduced her. They returned together, and he left her where he met her. The girl then went to her home where she lived with her father and mother, having been absent some hours longer than would have been the case if she had not met the prisoner. He made no enquiry and did not know who the girl was, or whether she had a father or mother living or not, but he had no reason to believe and did not believe that she was a girl of the town. The decision in this case turned upon the absence of any circumstances to show that the prisoner had knowledge that he was taking the girl from the possession of those who lawfully had charge of her. In the absence of any finding of fact upon that point, the Court said that the conviction could not be supported. (Reg. *v.* Hibbert, 1 L.R.C.C. 184.) In the two former cases, the fact of possession was negatived.

A mistaken belief that the prisoner had the guardian's consent to the taking, or that the girl was not under any one's guardianship, will be a defence to a charge under this section. But the mere circumstance that the prisoner erroneously and reasonably believed the girl to be over sixteen will be no defence. (Reg. *v.* Prince, 2 L.R.C.C. 154. See the case fully set out, *ante* p. 55.)

So great is the respect paid by the law to parental rights, that it will compel a girl to return to her father's roof, even against her own consent, if she is under the age of sixteen, unless there is reason to suppose that he will not exercise proper parental control. (Reg. *v.* Howes, 30 L.J.M.C. 47; Mallinson *v.* Mallinson, 1 L.R.P. & D. 221.) This principle was acted upon in the Supreme Court at Madras by Sir C. Rawlinson and Sir A. Bittleston, in the case of Culloor Narrainsawmy (Sept. 1858), where they decided that a Hindu youth of the age of 14, who had gone to the Scottish Missionaries, should be given up to his father, though he had become a convert to Christianity and was most anxious to remain with his new protectors. A similar decision was given in the Supreme Court of Bombay in regard to a boy of twelve years old (Perry, O.C. 103), and by Sir Mordaunt Wells

in Calcutta, in respect of a boy 15 years and 2 months old (in re Hemnauth Bose, 1 Hyd. 111); and an exactly opposite decision was given in Bombay by Sir Joseph Arnould, who refused to be bound by the authority of the decision of Sir M. Wells. The decision of his own Court and of the Madras Supreme Court do not appear to have been brought to his notice. (In re Wittoo, 9th May, 1865.) In the Bombay case the boy was 15 years and 7 months old.

By Muhammedan law the mother is entitled, even as against the father, to the custody of her sons up to 7 years, and of her daughters, according to the Soonee school of law up to puberty, but according to the Shiah school only until 7 years. (Mac. M.L. 267-269; 2 Hyde, 63; 2 W.R. Cir. 76.)

362. Whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.

Abduction.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for kidnapping.

This offence continues, and may therefore be abetted, so long as the process of taking the minor out of the keeping of his lawful guardian continues. (1 Mad. L.R. 173.)

The fact that a betrothal, not amounting to a marriage or transfer of guardianship, has taken place between the accused and the girl, is no answer to the charge, though it might diminish the heinousness of the offence. (5 R.J. & P. 149.)

A subject of an Independant State is amenable to the British Courts for the offence of kidnapping from British India, though, if the person so kidnapped were murdered beyond our territories, there would be no jurisdiction in respect of the homicide. (W.R.C. 89.)

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting, in order to murder.

Illustrations.

(*a*) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b*) A forcibly carries or entices B away from his house in order that B may be murdered. A has committed the offence defined in this section.

Kidnapping or abducting with intent secretly and wrongfully to confine a person.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or adducting a woman to compel her marriage, &c.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 366 seems to apply to cases where, at the time of the abduction, the woman has no intention of marriage or illicit intercourse, but it is contemplated that her marriage, or illicit intercourse with her, will be brought about by force or seduction brought to bear upon her afterwards. Section 498 embraces all cases where the object of the taking or enticing is, that the wife may have illicit intercourse with some other person, even though, as generally happens, she is quite aware of the purpose for which she is quitting her husband and is an assenting party to it. Therefore, where a procuress induced a married woman of 20 to leave her husband, and the facts showed that "she had made her deliberate choice, and was determined of her own free will to leave her husband, and become a prostitute in Calcutta," the Bengal High Court held that no conviction could be maintained under s. 366. But that there was quite sufficient evidence to convict the prisoner of enticing under s. 498, "for whatever the wife's secret inclinations were, she would have had no opportunity of carrying them out had not the prisoner interfered." (1 W.C.C. 45.)

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lusts of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.

Offences under ss. 367-370 & 371 committed by any subject of Her Majesty, or of an allied Prince upon the high seas, or in Asia or Africa are punishable in India under the Slave Trade Act, 39 & 40 Vict. c. 46, s. 1.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such person, with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

Wrongfully concealing or keeping in confinement a kidnapped person.

The mere keeping in a man's house of a girl whom he knows to have been kidnapped, is not an offence under this section. She must be restrained or kept out of view as well. (5 N.W.P. 133-189.)

369. Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting child under ten years with intent to steal moveable property from the person of such child.

370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave,

Buying or disposing of any person as a slave.

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See note to s. 367.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Habitual dealing in slaves.

See note to s. 367.

372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Selling of any minor for purposes of prostitution, &c.

To constitute an offence under this section, it is not necessary that there should have been a disposal equivalent to a transfer of possession or control over the minor's person; the mere fact of enrolling a minor among the dancing girls of a pagoda, whose profession is admittedly that of prostitution, constitutes the offence. (1 Mad. L.R. 164.)

373. Whoever buys, hires, or otherwise obtains possession of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Buying of any minor for purposes of prostitution.

These sections were very much considered in the case of Reg. *v.*

Shaik Ally. (5 Mad. H.C. 473.) There, the charge was under s. 373. It appeared that the prisoner by an offer of money induced a girl of the age of ten years to have a single act of sexual intercourse with him in an uninhabited house to which she went at his request for the purpose. Both parties were surprised in the act, and the man was at once taken into custody. The Judges, upon a case referred by Scotland, C.J., were of opinion that the conviction was bad. In the first place, they were all of opinion that the prisoner had never obtained possession of the girl within the meaning of the section. Scotland, C.J. said,

"But, to bring a case within the section, it is, in my opinion, essential to show that possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having the possession, whether ostensibly for a proper purpose or not. Complete possession and control of the minor's person obtained by buying, hiring, or otherwise, with the knowledge or intent that, by the effect of such possession or control, the minor should or would afterwards be employed or used for either of the purposes stated, is what the section was intended to make punishable as a crime. The provision seems to me to exclude the supposition that an obtaining of possession in the sense in which that expression is, no doubt, sometimes used, of merely having sexual connection with a woman, could have been in the mind of the framers of the section." (Acc. 7 N.W.P. 295).

On a second point there was a difference of opinion. The Chief Justice said, "It is not I think essential to the offence that the buying, hiring, or other obtaining of the possession of the minor should be from a third person; the language of the section is quite applicable to an agreement or understanding come to with the minor without the intervention of a third person, and the vice against which the section is directed is certainly not of any lesser enormity in the latter case."

On the other hand, Holloway, J., was of opinion that it must be a transaction "of which other parties are the subjects and the minor is the object." "This view need afford no encouragement to the debauching or seduction of innocent girls without the consent of their guardians; such cases are fully provided for elsewhere, and the fact that they are so removes all doubt from my mind as to the construction of the present section."

On a third point, Holloway, J. said, "I must guard myself against being supposed to think that nothing more is required than minority, a contract, and an intent to have sexual connection, to render the man who hires punishable under this section. The intention or knowledge must be made out, and it may well be, looking at the whole scope of the sections, that the previous ones deal with the corruption of girls without the consent of their guardians, or of women by suppressing their will by force or deceit, and that these deal with the case of trafficking in innocence. They are, perhaps, not intended by confounding the provinces of law and ethics to make men virtuous by Legislative enactment. A minor, not generally unchaste, may still be protected by its provisions; while she, who has been already devoted to prostitution, may not be within the protection, because, on any reasonable construction of the words, an unchaste act cannot have been committed with intent to do that which has already been done."

To sell or otherwise dispose of an innocent minor for the purpose of being brought up as a dancing girl, or devoted to a pagoda in that capacity, is an offence under s. 372; and to buy or receive a girl for such purpose is an offence under s. 373, inasmuch as it is notorious that prostitution is part of the profession of a dancing girl. (5 Mad. H.C. 415; 6 Bomb. C.C. 60; 1 Mad. L.R. 164).

Unlawful compulsory labour.

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The word "labour" has not been defined, and, therefore, will apply either to mental or bodily labour, though probably the last species was principally contemplated by the framers of the Code. The word "unlawfully" applies both to the person compelled and the means resorted to. It is not unlawful to compel a child, a scholar, or an apprentice to work, even by means of personal chastisement, when of a moderate nature (*ante* p. 271.) It is unlawful to compel a servant, or a person who is under a contract to labour, by means of personal violence, though it would be lawful to do so by moral compulsion, as threats of legal coercion. It would be unlawful to compel a person, who was not under an obligation by contract, to do work against his will, whatever the species of compulsion might be. I conceive, however, that the compulsion employed must be such as amounts in law to duress, and must at least be as great as would vitiate a contract. For instance, actual violence, or restraint, an illegal arrest, (Duke de Cadaval *v.* Collins, 4 A. & E. 858,) an unlawful detainer of goods, (Wakefield *v.* Newbon, 6 Q. B. 276,) a refusal to perform an act which the party employing the compulsion was legally bound to do, (Traherne *v.* Gardener, 25 L.J.Q.B. 201; 8 E. & B. 161.) Mere threats of personal enmity, hostile influence, withdrawal of favor, and the like would not be sufficient.

OF RAPE.

Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man, to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under ten years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for rape.

Upon a second conviction for this crime the offender is also liable to whipping. (Act VI of 1864, s. 4.) The essence of the offence of rape consists in its being committed against, or without, the consent of the female. Accordingly, the offence is complete if committed when the woman is incapable of giving a consent, as, for instance, where she is under the influence of stupefying drugs, or insensible from drink, or, from mental imbecility, is unconscious of the nature of the act which is taking place; or if the consent is to a different act from that which is really being done; as for instance, when the prisoner had connection with a girl, who believed that she was being subjected to a surgical operation for the benefit of her health, that belief being caused by his fraudulent representation. (Reg. *v.* Flattery, 2 Q.B.D. 410.) Nor is it any excuse that she consented at first, if the act was afterwards committed against her will, or that she consented after the fact, or from fear of injury, or under circumstances which rendered a successful resistance impossible. Nor is the mere cessation of a genuine resistance a sufficient evidence of consent. (1 W.R.C.C. 21.) Nor can it be set up as any defence that the woman was a common prostitute, or even that she was the concubine of the prisoner, if not legally united to him; for, however vicious her course of life, she is still entitled to the protection of the law, and may try to be virtuous whenever she chooses. (Arch. 610.)

In England, it is held that the consent produced by mere animal instinct would be sufficient to prevent the act from constituting a rape, and that even in the case of an idiot some evidence of want of consent is necessary. (Reg. *v.* Fletcher, 21 L.J.M.C. 85; Bell, 63; Reg. *v.* Fletcher, 1 L.R.C.C. 39.) But under the Code it would seem to be different, since by s. 90 "a consent is not such a consent as

intended by any section of the Code," if it is "given by a person who, from unsoundness of mind, is unable to understand the nature and consequence of that to which she gives consent." (See *ante* p. 73.)

The fourth clause of s. 375 is opposed to the decision of all the English authorities, who in several cases arrived at the conclusion that where a woman actually was a consenting party to the act though under the influence of mistake, the essential ingredient in the offence was wanting. It is obvious that such an assertion, when put forward by a married woman, requires to be scrutinized most suspiciously before it is accepted as true. Where there has been intimacy between the prisoner and the female, there will always be strong reason to suspect that the charge was set up to obviate the consequences of detection.

In the majority of cases, the only direct evidence of the rape is that of the prosecutrix herself. Where this breaks down, or cannot be obtained, as where the female from extreme youth or from some incapacity, such as being deaf and dumb, cannot give her testimony, and there is no other evidence producible (see Reg. *v.* Whitehead, 1 L.R.C.C. 33), there is nothing for it but to acquit. Her evidence should always be received, not with distrust, but with caution, remembering that the charge is one easy to make and hard to refute. The first thing necessary to examine in support of her statement is, whether there is any indirect evidence that sexual connection took place. Upon this point it is most important to have the evidence of a medical man as to the state of the parts. In India such evidence is often unattainable, but it would certainly be a suspicious circumstance if no female relation were produced to testify to marks or injury or the like. The next thing is to see, whether the connection, if it took place, was against her will. For this purpose all the surrounding circumstances should be carefully sifted. The character of the prosecutrix, her intimacy with the prisoner, and the amount of familiarity which she had formerly permitted him to indulge in; the place in which the act took place, as shewing that she might have obtained assistance; the distance at which other persons were passing by; any screams or cries which were heard, her conduct immediately after the outrage, her appearance, and so forth. (See Arch. 610.)

Evidence is admissible to show that the prosecutrix is a common prostitute, or that she has had previous connection with the prisoner, for both of these are material facts bearing directly upon the question of consent. But, although the prosecutrix may be asked on cross-examination whether she has not had illicit connection with other men, her answer is final, and evidence to contradict her is inadmissible. It is plain that such evidence would only go to her character. The fact that a woman has had voluntary, though unlawful, intercourse with A, is not even *primâ facie* evidence that she would submit to the same intercourse with Z, unless she is shown to make a trade of her person. (Reg. *v.* Holmes, 1 L.R.C.C. 334; Act I of 1872, s. 153.)

Under the Evidence Act (I of 1872, s. 8, *illus. j.*) not only the fact that the prosecutrix made a complaint is admissible in evidence, but the terms of the complaint. This lets in all those particulars, including the name of the man, which the English law, with its over-tenderness to the prisoner, excludes.

We have seen that the badness of a woman's character is no excuse for violating her. It is, however, a very important element in deciding whether she was violated, or whether she voluntarily consented to the act. Hence, the prisoner may always adduce evidence of her notorious want of chastity, or of her having had illicit intercourse with himself, or with other men; but it would seem that evidence of such particular facts cannot be given, unless the prosecutrix has been cross-examined upon the point. Because, in fairness to her, she ought to be allowed to deny the accusation if false, or to explain any circumstances of suspicion. (Arch. 610.) Where it is necessary to acquit the prisoner of rape, on the ground of consent, he cannot be convicted of adultery (1 M. Dig. 176, § 518 & 519); but he may of an attempt to rape, if the facts show that the offence was not completed. (Act XVIII of 1862, s. 17, and see Cr. P.C., s. 457.)

There would be nothing to prevent the Judge from altering the charge from rape into adultery during the course of trial (Cr. P.C., s. 445), provided the charge was instituted by the woman's husband. (Ibid. 478.)

Although a husband cannot commit a rape upon his own wife, who is above 10 years of age, he may be indicted for aiding and abetting in a rape committed by others, a very disgusting instance of which occurred in the case of Lord Audley. (Arch. 235.)

By the English law, as mentioned in p. 65, there is an invincible presumption as to the impossibility of a rape being committed by a boy under fourteen. Here, probably, an earlier date would be fixed, and possibly the Court might follow some of the American Judges in treating physical capacity as a matter capable of proof, and to be proved, independently of any arbitrary presumption. (1 Bishop § 466.)

Where a boy, only ten years old, was convicted by the Futwa of rape upon a girl only three years old, the Court of N.A. viewed it as an attempt only, and punished it as a misdemeanor with one year's imprisonment. (1 M. Dig. 146, § 531.) He may, however, be convicted of aiding and abetting in a rape by others. (Arch. 610.)

OF UNNATURAL OFFENCES.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Unnatural offence.

Upon a second conviction for this crime, the offender is also liable to whipping. (Act VI of 1864, s. 4.)

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in the section.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

OF THEFT.

Theft.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property, in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving, effected by the same act which effects the severance, may be a theft.

Explanation 3.—A person is said to cause a thing to move, by removing an obstacle which prevents it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person who by any means causes an animal to move is said to move that animal, and to move every thing which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either expressed or implied.

Illustrations.

(*a*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(*b*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the

dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*) A meets a bullock carrying a box of treasure. He drives the bullock in a different direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*) A, being Z's servant and intrusted by Z with the care of Z's plate, dishonestly runs away with the plate without Z's consent. A has committed theft.

(*e*) Z, going on a journey, intrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not, therefore, be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g*) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft inasmuch as he takes it dishonestly.

(*k*) Again, if A having pawned his watch to Z takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l*) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has, therefore, committed theft.

(*m*) A, being on friendly terms with Z, goes into Z's library in Z's absence and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z her husband. Here, it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(See Reg. *v.* Avery, 28 L.J.M.C. 185; Bell, 150.)

(*o*) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

(See Reg. *v.* Berry, 28 L.J.M.C. 70; Bell, 95.)

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Upon a first conviction for any offence under ss. 378, 380, 381 or 382, the criminal is liable to whipping in lieu of the punishment provided by the Penal Code. Upon a second conviction he is liable to whipping in addition to that punishment. (Act VI of 1864, ss. 2, 3.)

The crime of theft is, with two exceptions, composed of the same ingredients as that known to English law under the term larceny. This will be seen by comparing the definition in the text with that quoted in Russell from East's Pleas of the Crown, where larceny is defined to be

"The wrongful taking and carrying away by any person of the mere personal goods of another from any place, with a felonious intention to convert them to his (the taker's) own use, and make them his own property, without the consent of the owner." (2 Russ. 146.)

The first point of difference between the two definitions is, that the Code makes everything the object of theft which is moveable, *i.e.*, capable of being severed from its place. The English law, however, excluded from larceny all matters

"Which savour of the realty, and are, at the time they are taken, part of the freehold; whether they be of the substances of the land, as lead, or other minerals; or of the produce of the land, as trees, corn, grass, or other fruits; or things affixed to the land, as buildings, and articles such as lead, &c., annexed to buildings. The severance and taking of things of this description was, at common law, only a trespass." (2 Russ. 251.)

But inasmuch as the essence of the offence consists in the taking out of possession, the thing stolen must be something capable of being in possession. Therefore, wild birds or animals are not objects of theft, though, of course, it is different where the birds or animals are domesticated or confined. It would be theft to steal a tiger from a Zoological garden. It would not be theft to carry it away from a jungle. (2 Russ. 278-282; Reg. *v.* Townly, 1 L.R.C.C. 315.) The rule that wild animals are not the subject of theft depends upon the idea that they cannot be in the possession of any one. But this, of course, may be negatived, as in the case of birds in any aviary, deer in a park, or animals too young to escape from control. (Reg. *v.* Shickle, 1 L.R.C.C. 158.)

The second point of difference is, that it is no longer necessary to show "an intention to appropriate the chattel and exercise an entire dominion over it." (Per Lord Campbell, C.J., Reg. *v.* Trebilcock, 27 L.J.M.C. 103; D. & B. 458.) It is sufficient to show an intention to take dishonestly the property out of any person's possession without his consent, and that it was moved for that purpose. If the dishonest intention, the absence of consent, and the moving are established, the offence will be complete, however temporary may have been the proposed retention.

Nor is it necessary to show that the taking was against the person's consent. It is sufficient if it was without his consent, which is a very different thing. (Reg. *v.* Fletcher, 28 L.J.M.C. 85; Bell, 63.)

But the possession of the owner or holder of the property must continue. Therefore, where the owner of a bullock buried its carcase, and the prisoners dug it up, it was held that there could be no conviction for theft, as the owner had given up all property in, and possession of, the subject of the alleged theft. (4 Mad. H.C. Appx. 30.)

The removal must be done "dishonestly," which is defined by s. 24 as involving "intention of causing wrongful gain to one person, or wrongful loss to another person." Therefore, it is no theft where the articles are taken by mistake, or under a *bonâ fide* claim of right to possess them, however erroneous that claim may be, or with a *bonâ fide* belief that the owner's implied consent was given. (3 Sav. 374, s. 378, *illus. i. m. p.*)

Where the thing taken is utterly without value an acquittal under s. 95 would be supported. (5 Bomb. H.C. Cr. 35.)

But the mere fact that the prisoner had, or claimed to have, some rights in the property would not be a sufficient excuse. "If the property was in the possession of the prosecutor in such a way that he had a right to hold it against the prisoner, that is, that the prisoner could not get it without the consent of the prosecutor, then it would be theft, if the prisoner dishonestly possessed himself of it with the intention of appropriating it," (per Scotland, C.J., Reg. *v.* Ammoyee, 4th Madras Sessions, 1862.) Still less would it be any defence that the accused had a claim for the price of an article which had subsequently been sold to a third person, and had passed into

that person's possession. (Reg. *v.* Chellen, Scotland, C. J., 4th Madras Sessions, 1862.) Or, that he took the property in satisfaction of a debt due to himself. (1 R.C.C.C.R. 60.)

There can, of course, be no conviction where the circumstances shew that there was no dishonest intention within the meaning of the Penal Code. This was the case in one instance where the Court of F.U. acquitted the prisoner, Mr. Strange saying,

"The prisoner appears to have met the prosecutrix, when the latter was incapacitated by intoxication, and to have secured her cloth by placing it under the care of the first witness. There is no evidence that he removed the cloth from the prosecutrix feloniously, nor that he had any design of appropriating it to himself. I cannot, therefore, see that any robbery has been committed." (Mad. F.U. 168 of 1858.)

So, where a servant found fishermen poaching on his master's premises and seized their nets, which he refused to give up without his employer's orders, the Bengal High Court held that a conviction for theft must be quashed, as it was clear that the prisoner was acting *boná fide* in the interests of his master without any dishonest intention. (2 R.C.C.C.R. 59.) In this case it is plain that the servant's act was illegal, and injurious to the fishermen, therefore it caused them wrongful loss. If he knew this he must be taken to have intended it, and the fact that his primary intention was to serve his employers would not alter the case. No doubt, however, the High Court proceeded on the ground that he *boná fide* believed that he was acting rightly in detaining the nets. Where the prisoner's state of mind must be found as a fact, and that state of mind is honest, though the honesty arises from ignorance of law, the rule that ignorance of law is no excuse does not apply. The ignorance does not operate to excuse the crime, but to show that one of the essential ingredients in the crime was wanting. (See *ante* p. 57.)

Where the dishonest intention is established, it makes no difference in the prisoner's guilt that the act was not intended to procure any personal benefit to himself. No one can justify a theft on the Robin Hood-principle of taking from the rich to give to the poor. In one case a man was indicted for horse stealing, whereupon his companion broke into the prosecutor's stable, took out another horse, drove it into a coal pit and so killed it, with the view of suggesting that a similar accident had happened to the first horse. He was found guilty of stealing, though he had never intended to make any other use of the animal. (Arch. 283.) And, so, it was held in Bengal, where the prisoner took the prosecutor's bullocks against his will, and distributed them among the creditors of the latter. (4 R.J. & P. 417.)

It is not necessary to show that the person out of whose possession the property was taken was its owner if the taking is itself dishonest, that is, will cause wrongful gain to the taker or wrongful loss to the loser. (See illus. *j. k. ante* p. 302.) But the mutual position of the parties may be such that there can be no dishonesty in the taking by one from the other without consent asked or given. Hence, if a wife carry away and convert to her own use the goods of her husband, this, according to English law, is no larceny, for husband and wife are one person. (Arch. 284.) Still less of course, if the property is

her own, as the paraphernalia of an English wife, or the stridhanum of a Hindu wife. (8 Bomb. C.C. 11.) And the same doctrine has been laid down by the Madras High Court. (Rulings of 1864 on s. 406, and of 1865 on s. 176.) And, so, Scotland, C. J., directed the jury that a count which charged a prisoner as a receiver could not be sustained, inasmuch as the prosecutor's wife was the person from whom the goods had been received. (Reg. *v.* Venkata Reddy, 4th Madras Sessions, 1864. Reg. *v.* Kenny, 2 Q.B.D. 307.) See, too, illustration *(o)*, where the paramour A, and not the wife, is treated as the thief.

On the other hand, it has been laid down in Bombay that a Mahometan wife may be convicted of stealing from her husband, as there does not exist the same identity of interest between husband and wife under Mahometan as under English law. (6 Bomb. C.C. 9.) And in a Madras case where two persons were indicted, the one for adultery with and enticing away the wife of the prosecutor and theft of his property, and the other with abetting the enticing and theft, and it appeared that the wife by means of false keys supplied to her by the second prisoner got possession of the prosecutor's jewels and handed them over to the prisoner, but the adultery was negatived, the High Court held that it was still open to the jury to say that the prisoner dishonestly took part in the removal of the husband's property. In fact, the doctrine of the English law appears to have arisen from raising a presumption of fact into a presumption of law. The property of an English husband is by no means the property of his wife. But the relationship between them is such that in the vast majority of cases the wife is allowed the use of her husband's property, and is even allowed, or may imagine herself or be imagined by others to be allowed, to deal with it to the extent of disposing of it. In all cases where she imagined she was so authorized, of course there could be no theft. Nor could there be anything criminal in helping her to remove property which the person so helping believed she was at liberty to deal with. But there can be no reason why this presumption should not be negatived, either as regards the wife herself or those who join in her acts. The English law considers that as regards third parties it is negatived where the person acting with the wife is her paramour. (2 Russ. 283; Reg. *v.* Mutters, 34 L.J.M.C. 54.) But it is obvious that there are numerous other facts which might just as conclusively show that the person knew that the wife was acting in fraud of her husband.

On much the same principle as that of the English law it has been held that a Hindu husband cannot be convicted of robbing his wife, the wife, according to Hindu law, being completely under the control of her husband. (3 M. Dig. 129, s. 185.) But I doubt whether this argument would apply in favour of a Hindu husband who dishonestly took his wife's Stridhana, over which she has absolute control (1 Stra. H.L. 27, 28; 3 Mad. H.C. 272); or in favour of a Mahometan husband, who gets no right over his wife's property by marriage. (MacNaghten's M.L. 254.) Such property is not in the possession of the wife, on account of the husband, so as to make her possession be his possession, within the meaning of s. 27.

Nor can a man be turned into a thief for regaining possession of his own property, held by one who has no right to it; nor can a joint

tenant, as, for instance, the member of a Hindu undivided family, be indicted for a theft of the family goods, since he has just as good a right to them as any one else. (Arch. 284. See Jacobs *v.* Seward, 4 L.R.C.P. 328.) But, even in the case of an undivided member, it would be theft if he took the goods for the fraudulent purpose of getting any dishonest advantage for himself. For instance, if he secreted any part of the family property for the purpose of appropriating it for his own exclusive benefit, or if, when a division was in progress, he took possession of any articles without the knowledge of the other co-parceners, for the purpose of securing to himself an extra share. (Reg. *v.* Chockanathen, 3rd Madras Sessions, 1864, Bittleston, J.) And, so, it would be when the holder of the goods had some interest in them, which authorized him to retain them against the owner. If I pawn my watch it would be theft to take it away from the pawnbroker's shop without repaying the loan. (Illus. *k.*) And, similarly, if the effect of the taking were to charge the holder with its price, as when a member of a benefit society entered the room of a person with whom a box containing the funds of the society was deposited and took and carried it away, this was held to be larceny, the bailee being answerable to the society for the funds. (Arch. 284.) And a man might even be convicted of stealing his own money from his own servant, if the servant, being ignorant of the manner in which the money was abstracted, would have to make it good. (Reg. *v.* Webster, 31 L.J.M.C. 17; L. & C. 77; Reg. *v.* Burgess, 32 L.J.M.C. 185; L. & C. 299.)

Savigny suggest a curious question, whether a person who is ignorant that a piece of property is his own and who, intending to steal it, takes it from a third person who has himself no right to it and perhaps has stolen it, can be convicted of theft. He decides the question in the negative. "The owner, who in this manner carries away his own property, has the intention of committing a theft but in fact commits none, for there is wanting one of the essential conditions of theft, viz., a violation of the right of another. The intending thief is protected, not by his mistake, but by the absence of the *corpus delicti.*" (3 Sav. 412.) Probably the same decision would be given if the party were indicted under the Penal Code, though, undoubtedly, all the requirements of s. 378 would be literally complied with in the case supposed. Actual injury to a right is not required, if there is a dishonest intention to injure one.

In the vast majority of cases where a theft is charged, the property has been taken from the owner clandestinely and without his consent. Sometimes, however, it happens that the possession of the article has been voluntarily resigned by the proprietor, and the very difficult question then arises, whether the person, to whom it has been so resigned, will become a thief in consequence of any subsequent dealing with it? It is evident how important this question is, since any mistake upon the subject might result in an indictment against a person who lost a borrowed book, and then denied all knowledge of the loan; or who bought goods, and then refused either to pay for or return them.

A solution of all such doubts will generally be obtained by remembering, that the essence of theft consists in its being a dishonest or

criminal taking from the possession of the owner without his consent. Consequently, if the taking is not criminal, when the possession is changed, there is no theft. The cases, then, will resolve themselves into four classes, one of which is certainly theft, two of which are not theft, while as to the third it seems uncertain whether it does or does not come under the definition.

1. By s. 27, property is said to be in a person's possession when it is in the possession of his wife, clerk, or servant, even though the clerk or servant be only employed temporarily, or on a particular occasion.

For instance, if I entrust my horse to my coachman, or plate and wine to my butler, my possession of them is never altered. I merely hold them by another hand. Instead of shutting them up in a stable or room, I put a human lock and key over them, but my right is never affected. Consequently, if my servant sells my horse, drinks my wine, or pawns my plate, this is theft, because he takes them directly out of my possession, criminally and without my leave. And so it has been held in numbers of cases where servants appropriated money, goods, cheques, bills of exchange, &c., which have been given to them by their master for use or custody. (Arch. 293.) On the same principle, goods which are the property are in their possession so long as they are in the possession of the servant who is entrusted with them. A dishonest and fraudulent removal of the goods from his possession would be theft, even if it was with his consent, provided it was known to the person removing them that his consent was itself fraudulent and unauthorized. (1 Bomb. L.R. 610.)

. And where the servant was entrusted with the property by his master, though he obtained it by false pretences, it was still held that his possession was the possession of the master. Therefore, where a servant, whose duty it was at the end of every day to obtain from his employer's cashier the money necessary to pay certain charges, falsely represented to the cashier, that a larger sum was due and appropriated the difference, this was held to be larceny. (Reg. *v.* Cooke, 1 L.R.C.C. 295.) And, so, I conceive it would be under the Penal Code, if the money so obtained was his master's. But it would be different if the money belonged to the third person, and was obtained from him by a false representation that the master was entitled to it, since the possession of a person's clerk or servant must be a possession "on account of that person." (s. 27.)

The case is exactly the same where one gives the mere manual possession of goods to another, but in such a way as not to part with his dominion over them. For instance, the hotel keeper, who allows his guest to use his furniture or spoons, gives him no other right over them, and of course it would be just as much theft to take the plate out of a hotel as to carry it away from a friend's house. (Arch. 295; Reg. *v.* Thompson, 32 L.J.M.C. 35; L. & C. 225.)

The Scotch law went even further, for it held that

"If goods are delivered to a stranger or carrier for a special and particular purpose, independent of any transfer of property, as to be conveyed to a particular place, or subjected to a particular operation, the abstraction of them by the person entrusted is theft." (Alison Cr. L. 252.)

Under the present Code such offences would be punishable as

breaches of trust under s. 405. And, so, I conceive it would be even in the case of a clerk or servant, where the master never had any possession of the property except through the means of his servant. For instance, if a bill collector were to apply to his own use money which he had received on account of his master, this would certainly be a breach of trust under s. 408, and should, I think, be charged as such, and not as a theft under s. 381.

If the clerk or servant is authorized to dispose of his master's property and does so, but applies the proceeds to his own use, he cannot be indicted for theft of the goods, for the removal of them out of his master's possession was not wrongful; but he will be liable for the misappropriation of the money, under s. 403. (Reg. *v.* Betts, 28 L.J. M.C. 69; Bell, 90.)

2. Again, the owner may not only give up the possession of his goods, but also intend to part with all right and dominion over them in the event of a particular condition being complied with, but in no other event. Now, if a person, intending from the first to trick the owner out of his property, were to get possession of it without complying with the condition, this, under the English law, is theft. (Arch. 287; Reg. *v.* McKale, 1 L.R.C.C. 125.) For instance, where a party presented himself at a Post Office and asked for a watch which was there, falsely representing himself to be the person to whom it was addressed and so obtained it, this was held to be larceny, because the Post Office Clerk intended to give it up to no one but the rightful owner. (Reg. *v.* Kay, 25 L.J.M.C. 149; D. & B. 231.) And the same rule applied where the possession was obtained by a trick from a servant, who was only entrusted with the goods for a special purpose, and not authorized to part with them for any other purpose. (Reg. *v.* Prince, 1 L.R.C.C. 150.) So where a depositor in a Saving's Bank presented a warrant for 10*s.* which he was entitled to draw, and the clerk, referring by mistake to a wrong letter of advice, handed him £8 10*s.* 6*d.*, which he entered in the prisoner's deposit book, and the prisoner took away the money; it being found by the jury that at the moment of taking it up he had an *animus furandi*, it was held by eleven against three Judges that he was guilty of larceny. (Reg. *v.* Middleton, 2 Ibid. 38.)

A different case from the above is that of what may be termed a physical consent, with a real and understood dissent. The following is an instance. The defendant acted as auctioneer at a mock auction, and knocked down a piece of cloth to a woman whom he knew had not bid for it, and refused to allow her to leave the room unless she paid for it. She did so, and he was held to be rightly convicted of larceny, since, even if the force used did not make the offence be that of robbery, the defendant got the money from her fraudulently and against her will. (Reg. *v.* McGrath, 1 L.R.C.C. 205.)

But it is very doubtful whether such cases could be dealt with as thefts under the Penal Code. The English law requires the owner's consent to the change of property in the goods (1 L.R.C.C. 129), and that consent may be absent though he assents to the manual possession by another. But the Penal Code seems merely to inquire, whether the removal, if fraudulent, has been without the owner's consent. There certainly has in the above cases been a consent by the

owner to the removal, though brought about by fraudulent means. At most, the crime is a constructive theft, and the object of the Code is to get rid of constructive offences. Every instance of the sort would be indictable under s. 420 as cheating. Until, therefore, an authoritative decision has been given, it would be well always to join a count under that section, especially in trials before the High Court, since no conviction for cheating can be had upon a count for theft, nor can the Court order an amendment of the indictment, (Act XVIII of 1862, ss. 4, 5.)

3. Where a party has obtained the possession of any chattel *bonâ fide* and without fraud, *and is not a servant of the original owner*, no subsequent appropriation of the article, or malpractices in reference to it, can make him guilty of theft. And this by virtue of its definition; because the taking, the change of possession, was not originally criminal. Hence, where goods are delivered to a man upon trust, or taken by him with the owner's consent, he is not guilty of theft by afterwards converting them to his own use. Where the defendant saved some of the prosecutor's goods from a fire which happened in his house, and took them home to her own lodgings, but the next morning she concealed them and denied having them in her possession, the jury finding that she took them originally merely from a desire of saving them for and returning to the prosecutor, and that she had no evil intention till afterwards, the Judges held that it was a mere breach of trust and not felony. (Arch. 291.)

Cases of this sort, however, will always be indictable either under s. 403 or 305.

4. The last class of cases arises out of the principle "that if the owner part with the property, that is, the right of dominion over the thing taken, as well as the possession, there can be no theft in the taking, however fraudulent the means by which such delivery was procured." (2 Russ. 196.) Where goods are sold upon credit the purchaser cannot be indicted for theft, though the goods are never paid for, and though in fact he never intended to pay for them. So, where the defendant bought a horse at a fair of the prosecutor, to whom he was known, and having mounted the horse, said to the prosecutor that he would return immediately and pay him, to which the prosecutor answered "very well," and the prisoner rode the horse away, and never returned, this was held to be no theft, because the property as well as the possession was parted with. And this rule holds good where the possession and property is obtained from a servant, such as the cashier of a bank, who has a general authority to conduct his employer's business and to part with his property. (Reg. *v.* Prince, 1 L.R.C.C. 150.)

Such cases will now be indictable under s. 420 as cheating.

Further, the crime of theft will not be complete without a moving of the article. The principle of this rule is very obvious, viz., that a mere intention to commit a crime does not constitute the crime, and as the essence of theft consists in an unlawful taking away it must be shown that something was done towards carrying out that offence. It is not necessary to prove that the goods were removed out of their owner's reach. Any removal from the spot in which they are, however small, will be sufficient, provided the party accused have, for an

instant at least, the entire and absolute possession of them. For instance, the offence was held to be complete in cases where the prisoner had taken goods out of a chest and laid them on the floor, but was surprised before he could escape with them. And, so, where he had removed a cask from one end of a waggon to the other. (Arch. 295.) And in the case of a post office letter carrier, the taking of a letter out of the bag in which letters were carried during delivery and placing it in his own pocket was held to be sufficient, the Jury having found that he put the letter in his pocket intending to steal it. (Reg. *v.* Poynton, 32 L.J.M.C. 29; L. & C. 247.) But the contrary was held where the property was merely altered in position, without any attempt at removal—as, where the defendant merely set a package on end, in the place where it lay, for the purpose of cutting open the side of it to get out the contents, and was detected before he had accomplished his purpose. (Arch. 296.) Under English law even an actual removal is not sufficient, if the prisoner has never had the article in his power; as, for instance, where he attempted to carry it off, but was unable on account of its being chained to the counter. (Ibid.) But the words of s. 378 seem wide enough to take in even such a case.

Lastly, it may be remarked that, in many cases, the only evidence of a theft arises from the fact of the stolen property being found in the prisoner's possession. Upon this point, the following quotations cited in Norton on Evidence (325, 326, 4th ed.) deserve attention :—

"It may be laid down generally, that wherever the property of one man which has been taken from him without his knowledge or consent is found upon another, it is incumbent on that other to prove how he came by it; otherwise, the presumption is that he obtained it feloniously. This, like every other presumption, is strengthened, weakened, or rebutted, by concomitant circumstances, too numerous in the nature of the thing to be detailed. It will be sufficient to allude to some of the most prominent, such as the length of time which has elapsed between the loss of the property and the finding it again; either as it may furnish more or less doubt of the identity of it; or as it may have changed hands oftener in the meantime; or as it may increase the difficulty to the prisoner of accounting for how he came by it, in all which considerations that of the nature of the property must generally be mingled. So the probability of the prisoner's having been near the spot from whence the property was supposed to be taken at the time, as well as his conduct during the whole transaction, both before and after the discovery, are material ingredients in the investigation. But the bare circumstance of finding in one's possession property of the same kind which another has lost, unless that other can from marks or other circumstances satisfy the Court and jury of the identity of it, is not in general sufficient evidence of the goods having been feloniously obtained. Though, where the fact is very recent, so as to afford reasonable presumption that the property could not have been acquired in any other manner, the Court are warranted in concluding it is the same, unless the prisoner can prove the contrary. Thus, a man being found coming out of another's barn, and, upon search, corn being found upon him of the same kind with what was in the barn, is pregnant evidence of guilt. (2 East P.C. 656; Reg. *v.* Oddy, 2 Den. C.C. 264.)

"But in order to raise this presumption legitimately the possession of the stolen property should be clearly traced to the accused, and be exclusive as well as recent. The finding it on his person, for instance, or in a locked-up house, room, or box of which he kept the key, would be a fair ground for calling on him for his defence; but if the articles stolen were only found lying in a house or room in which he lived jointly with others equally capable with himself of having committed the theft, or in an open box to which others had access, no definite presumption of his guilt could be made. An exception is said to exist

where the accused is the owner of the house in which stolen property is found, who, it is argued, must be presumed to have such control over it as to prevent anything coming in or being taken out without his sanction. As a foundation for civil responsibility this reasoning may be correct, but to conclude the master of a house guilty of felony on the double presumption, first, that the stolen goods found in the house were placed there by him or with his connivance, and, secondly, that he was the thief who stole them, and there are no corroborative circumstances, is certainly treading on the very verge of artificial conviction." (Best Ev. 268, and see Reg. *v.* Longmead, L. & C. 427; 3 Russ. 667; 5 N.W.P. 120.)

Where a prisoner has been convicted of any offence punishable under the Penal Code, by means of or in consequence of which the possession of property shall have been transferred, and where the party has been indicted by the owner of the property or by his executor or administrator, the Court may after conviction order restitution of the property to be made. But if it shall appear that any valuable security has been *bonâ fide* discharged, or that any negotiable instrument has been *bonâ fide* received in transfer, without notice and for sufficient consideration, restoration shall not be ordered. (9 Geo. IV, c. 74, s. 110; Act XVIII of 1862, s. 39.) This provision only applies within the limits of the High Court in its original criminal jurisdiction.

In the Mofussil it is provided by the Cr. P.C., ss. 418-420 and Act XI of 1874, s. 38, that

"When the enquiry or trial in any Criminal Court is concluded, the Court may make such order as appears right for the disposal of any property produced before it, regarding which any offence appears to have been committed."

"Any Court of appeal, reference, or revision may direct any such order passed by a Court subordinate thereto to be stayed, and may modify, alter, or annul it."

"The order passed by any Court under s. 418 or 419 may be in the form of a reference of the property to the Magistrate of the District, or to a Magistrate of a division of a District, who shall in such cases deal with it as if the property had been seized by the Police and the seizure had been reported to him."

The word 'property' in the above sections includes not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion, or exchange, whether immediately or otherwise. (Act XI of 1874, s. 34.) It also includes property produced by a witness as well as property found in possession of the accused. (12 Bomb. 217.)

The provisions of the High Court Act, X of 1875, s. 115, are exactly the same.

It will be observed, that under the above sections it is not necessary that the trial should have terminated in the conviction of the offender. It is sufficient if an offence appears to have been committed regarding the property, although the prisoner may not be the offender. In general, where the proceedings terminated in an acquittal, the property would be restored to the person by whom it was produced, or in whose possession it was found. (1 Bomb. L.R. 630.)

See as to the summary jurisdiction of the Magistrate of the District over offences under this section, and ss. 380 & 381, where the value of the property does not exceed Rs. 50, Crim. P.C., s. 222.

380. Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft in dwelling house, &c.

Where the theft was of a cloth, spread out to dry on the roof of a house, to which the prisoner got access by scaling the wall, it was held that there was no entry into the house, and, consequently, there could neither have been house-breaking nor theft in a house, and that the fact that the roof was used for various domestic purposes could make no difference. (Pro. H.C. Mad., 17th March, 1866.) So, a theft from a verandah is not theft in a building. (Mad. H.C. Rul., 28th Oct. 1870.) A cattle shed is "a building used for the custody of property" within this section. (Pro. H.C. Mad., 24th November, 1866.)

See Act VI of 1864, ss. 2, 3, *ante* note to s. 379, p. 303.

Theft in a house is an aggravated theft, which is not cognizable by heads of villages in the Madras Presidency. (Rulings of High Court of Madras, 1864, on s. 380.)

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft by clerk or servant of property in possession of master.

Where a servant was sent by his fellow-servants to receive their pay from their common master, and made away with it, it was ruled that he received it as their agent, and that it ceased to be the master's money and became theirs. (Reg. *v.* Barnes, 1 L.R.C.C. 45.) Such an act would be punishable here as criminal breach of trust under s. 406.

Questions often arise as to whether a person in possession of monies not belonging to himself, holds them as the clerk or servant of his employer, so that his possession is that of his master, or merely as an accountable agent. In the former case his misappropriation of these would be a theft under s. 381; in the latter a criminal breach of trust. One test seems to be whether he is bound to hand over to his master, or apply for his benefit the identical

coins which are in his possession, or whether he is only bound to bring them into account as a sum which he is bound to make good, with liberty in the meantime to apply the coins in any manner he likes. In the former case he is a servant; in the latter he is merely a trustee, like a banker or receiver. (Reg. *v.* Tyree, 1 L.R.C.C. 177.) See too note to s. 408.

See Act VI of 1864, ss. 2, 3, *ante* note to s. 379, p. 303.

382. Whoever commits theft, having made preparation for causing death or hurt or restraint, or fear of death or of hurt or of restraint to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Theft after preparation made for causing death or hurt, in order to the committing of the theft.

Illustrations.

(*a*) A commits theft on property in Z's possession, and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(*b*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in the section.

See Act VI of 1864, ss. 2, 3, *ante* note to s. 379, p. 303.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion."

Extortion.

Illustrations.

(*a*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(*c*) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for extortion.

Extortion under certain circumstances will become robbery. (*Post* s. 390.) The offence under this Code seems to include some cases which would have been treated as robbery under English law, and others which would not have been punishable under the English law, though they would under the Scotch system.

Under the English law the offence of robbery was equally completed, although the actual delivery of the thing taken was the act of the party robbed, provided that delivery arose from his being put in fear. (2 Russ. 104.) But there were some sorts of fear which the English law did not consider as sufficient to justify a person in yielding; therefore, it was held that the fear of injury to character was not such an intimidation as would amount to robbery, unless in the single case of threatening to accuse of an unnatural offence. (3 Ibid. 118-124.) The offence of extortion under s. 383 seems to embrace two classes of cases—first, every threat of prospective injury, of whatever nature; and, secondly, every threat of immediate injury, provided the injury apprehended is not death, hurt, or wrongful restraint. But the mere going about and collecting money, upon an assertion that an order had issued to tax the persons upon whom the demand was made, is not extortion but cheating. (5 R.J. & P. 147.)

The offence will be extortion, though the injury threatened is one which the party employing the menace would be justified in resorting to, provided the threat is used as a means of obtaining an undue advantage. It is lawful to bring a criminal to justice, or to expose a rogue, but it is extortion to wring from his fears of detention any profit which he would not otherwise be willing to bestow.

Accordingly, it has been held, that where money was extorted by a threat of bringing a criminal charge, the offence was equally committed whether the charge was true or false. (3 R.C.C.R. 19.)

But where a defendant was convicted of extortion, and it appeared that he was engaged as junior Vakil, and that in the absence of his senior who had instructed him to ask for an adjournment he compelled his client to pay him an extra fee and then conducted the case, it was held that the conviction was bad. Being engaged as junior to another, the Court said that he was under no obligation to conduct the case alone, and, therefore, there was neither an offence nor anything prohibited by law in his insisting on an additional fee. (5 Mad. H.C. Rul. 14.) It may be doubted whether the High Court was right in the view that it took of a junior Council's obligations. This, however, does not affect the principle laid down.

Not only must there be a putting in fear, but the fear must be the inducement which causes the other person to deliver up the property.

"The degree of such alarm may vary in different cases. The essential matter is, that it be of a nature and extent to unsettle the mind of the person on whom it operates, and to take away from his acts that element of free voluntary action which alone constitutes consent." (Per Wilde, B. Reg. *v.* Walton, 32 L.J.M.C. 79; L. & C. 288.)

The act, however, must be done dishonestly (see s. 24), and, therefore, if a person *bonâ fide* believes himself to be entitled to the property in question the crime will not have been completed. (Arch. 356; 3 Bomb. H.C.C.C. 45.)

Where by arrangement among several persons the threat is used by some, and the property obtained by that threat is received by the others, all are equally guilty of extortion. (2 Bomb. H.C. 417.)

Delivery of the property by the person put in fear is an essential to the offence. If, therefore, no such delivery takes place, but the persons who are intimidated passively allow the offenders to take away the property, this would be robbery if the threat came under the terms of s. 390, but not extortion. (1 R.C.C.C.R. 20.)

385. Whoever, in order to the committing of extortion, puts any person in fear or attempts to put any person in fear of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Extortion by putting a person in fear of death or grievous hurt.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence, (*see* s. 40, *ante* p. 25) punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offences, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under Section 377, may be punished with transportation for life.

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

Where the prisoner threatened A's father that he would charge A with having committed an unnatural offence with a mare, his object being to force the father to buy the mare at the prisoner's price, this was held to amount to extortion under an English statute similar in effect to s. 388. (Reg. *v.* Redman, 1. L.R.C.C. 12.)

See Cr. P.C., s. 89, *ante* p. 106.

Persons convicted under ss. 388 & 389 may be whipped in lieu of the punishment prescribed by the Penal Code, and upon a second conviction may be whipped in addition to that punishment, provided no longer imprisonment than five years has been inflicted. (Act VI of 1864, ss. 2, 3, 7.)

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation against that person or any other, of having committed or attempted to commit an offence, (*see* s. 40, *ante* p. 25) punish-

Putting person in fear of accusation of offence, in order to commit extortion.

able with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under Section 377, may be punished with transportation for life.

See note to s. 388.

OF ROBBERY AND DACOITY.

Robbery.

390. In all robbery there is either theft or extortion.

When theft is robbery.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft,

and in order to the committing of that theft has voluntarily caused wrongful restraint to Z. A has, therefore, committed robbery.

(*b*) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has, therefore, committed robbery.

(*c*) A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice unless Z delivers his purse. Z, in consequence, delivers his purse. Here, A has extorted the purse from Z by causing Z to be in fear of instant hurt to the child who is there present. A has, therefore, committed robbery on Z.

(*d*) A obtains property from Z by saying, "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand Rupees." This is extortion and punishable as such, but it is not robbery unless Z is put in fear of the instant death of his child.

Robbery, as defined in s. 390, consists of a completed theft or a completed extortion, with some additional circumstances. Every case which is robbery under this section would have been robbery under English law, but the converse does not appear to be true. The definition of robbery under both English and Scotch law was a theft by violence or putting in fear. (2 Russ. 108, 123; Alison Cr. L. 227.) Therefore, it was held to be robbery in one case, where it appeared that the prisoner snatched at a sword while it was hanging at a gentleman's side, whereupon the latter instantly laid tight hold of the scabbard which caused a struggle between them in which the prisoner got possession of the sword and took it away. (2 Russ. 109.) But under the above section the violence must amount to a causing or attempting to cause death, or hurt (see s. 319), or wrongful restraint (see s. 339) or the fear of such. Apprehension of injury to property or character will not amount to robbery, though it will be extortion under s. 383.

Where the property is forcibly taken away from the owner under the above circumstances the offence will be theft turned into robbery. Where, however, the owner is prevailed upon himself to surrender his property, then it will be the crime of extortion aggravated into robbery.

In order to constitute robbery there must be an act of theft or extortion completed, and, therefore, the accused must have had such a possession of the property as would constitute the above crimes; but a merely momentary possession is sufficient, and the crime is completed though the property is given back immediately. Hence, in one case, where

"It was found that the prisoner stopped the prosecutor as he was carrying a feather bed on his shoulders, and told him to lay it down or he would shoot him. The prosecutor laid the bed on the ground; but before the prisoner could take it up, so as to remove it from the spot where it lay, he was apprehended. The Judges were of opinion that the offence was not completed, and he was discharged." (1 Leach, 322.)

Of course, in a similar case under the present Code he could be convicted of an attempt to rob under s. 511.

The use of violence will not convert theft into robbery, unless the violence is committed for one of the ends specified in s. 390; therefore, where a thief, finding himself observed, abandoned his booty and ran away, throwing stones at the owner to prevent pursuit, the Madras High Court ruled that the offence was not robbery. (Rulings of 1865 on s. 390.)

As in the case of theft or extortion, so in the compound crime of robbery, the act must be done dishonestly (see s. 24); and, therefore, if a person, *boná fide* believing that property in the personal possession of another belongs to himself or to another, on whose behalf he is acting (2 R.J. & P. 114; 3 Mad. H.C. 254; 3 Sav. 374), takes that property away from such person with menaces and violence, this is not robbery; and it is a question of fact, whether the prisoner did not act under such *boná fide* belief. (2 Russ. 105.)

Upon the crime of robbery the framers of the Code remark (p. 77),

"There can be no case of robbery which does not fall within the definition either of theft, or of extortion. But in practice it will perpetually be matter of doubt whether a particular act of robbery was a theft or an extortion. A large portion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life. Z assists in taking off his ornaments and delivers them to A. Here such ornaments as Z took without A's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion."

Dacoity.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity."

Where hurt is caused in the commission of a robbery or dacoity it need not be charged as a separate offence, since it is included in the definition of the crime. (1 R.J. & P. 65.) But hurt or grievous hurt voluntarily caused in the commission of a robbery or a dacoity constitutes an aggravation of it, which should be charged under ss. 394 or 397. See note to s. 394.

Punishment for robbery.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the

robbery be committed on the highway, between sunset and sunrise, the imprisonment may be extended to fourteen years.

See Cr. P.C., s. 89, *ante* p. 108.

Any person who is a second time convicted of robbery or dacoity, or of the offences defined in ss. 393 & 394, may be whipped in addition to the punishment provided by the Penal Code, unless he has been sentenced to transportation or to imprisonment for a longer term than five years. (Act VI of 1864, ss. 4, 7.)

Attempt to commit robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

See note to s. 392.

Voluntarily causing hurt in committing robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person, jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

See note to s. 392.

The offence defined in s. 391 is included in s. 394, and, therefore, a prisoner who has committed both offences, as part of the same transaction, should be sentenced under s. 394 only. (2 W.R.C.C. 1.)

Punishment for dacoity.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

See note to s. 392.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

See note to s. 392.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Robbery or dacoity, with attempt to cause death or grievous hurt.

See Cr. P.C., s. 89, *ante* p. 108.

The liability to enhanced punishment under this section is limited to the offender who actually causes grievous hurt. (Mad. H.C. Rul., 18th March, 1868.)

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

See note to s. 397.

399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Making preparation to commit dacoity.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall

Punishment for belonging to a gang of dacoits.

be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a wandering gang of thieves.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

In a case under this section, it is necessary first to prove association, and, secondly, that the association is for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts. (6 Mad. H.C. 120.) I do not imagine, however, that it would be necessary to prove such acts with the same accuracy as if each was the subject of a charge of theft.

Assembling for purpose of committing dacoity.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

See Cr. P.C., s. 89, *ante* p. 108.

Magistrates, or officers exercising the powers of Magistrate, may exact security for good behaviour for one year from persons who appear from general evidence to be by repute robbers, house-breakers, receivers of stolen property, or persons of notoriously bad livelihood. (Cr. P.C., s. 505.) Where, under the circumstances, the release of such person without security at the expiration of one year may appear hazardous to the community, the period may be extended to three years. (Ibid. s. 506.) In default of security the party may be committed to prison. (Ibid. s. 510.)

OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

Dishonest misappropriation of property.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a

term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*) A, being on friendly terms with Z, goes into Z's library in Z's absence and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c*) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(*a*) A finds a Rupee on the high road, not knowing to whom the Rupee belongs. A picks up the Rupee. Here A has not committed the offence defined in this section.

(*b*) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

This section is intended to provide for certain acts which would not be criminal under other heads. Theft involves an act criminal at the moment it first took place; it also involves taking a thing out of the possession of the owner. Criminal misappropriation takes place when the possession has been innocently come by, but where by a subsequent change of intention, or from the knowledge of some new fact, with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. (3 N.W.P. 30.) Criminal breach of trust can only exist where some relation of trust exists between the parties, but under the present head all that is necessary is, that the prisoner should convert to his own use property which he knows is not his own, not believing himself to be authorized to do so. Cheating, like theft, pre-supposes a fraudulent intention at the time the possession of the property was charged, which, as we have seen, is not an ingredient in the present offence. (2 N.W.P. 475.)

Under the English law the finder of property who appropriates it to himself, knowing or having the means of ascertaining the owner, commits larceny. But he commits no offence whatever if he has no such knowledge or means of knowledge at the time of the appropriation, though he retains the property designedly after becoming acquainted with its rightful ownership. Under s. 403 both cases constitute the offence of criminal misappropriation.

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

This section only applies to moveable property. (6 Bomb. C.C. 33.)

A conviction under ss. 404 or 403 will be valid, although the offence really committed was a theft under ss. 378, 380, or 381. (Act X of 1875, s. 21, and see Cr. P.C., s. 456.)

OF CRIMINAL BREACH OF TRUST.

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which

he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

(*a*) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lac of Rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d*) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z instead of buying Company's paper,—here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e*) A, a revenue officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Where a turban was pledged with the defendant, it was held that his wearing it did not amount to a dishonest misappropriation within s. 405; the deterioration of the article by use was not such a loss of property by the prosecutor, and the wrongful beneficial use was not such a gain by the prisoner, as came within the definition of the term "dishonestly" in s. 24. (3 Mad. H.C. Appx. 6.) But the pledging of an article pledged with the defendant may amount to a criminal breach of trust if it appears, first, that such second pledge was in violation of the contract or understanding on which the original pledge was made, and, secondly, that it was done dishonestly. (6 Mad. H.C. Rul. 28.)

A married woman, who, as such, is incapable of entering into a legal contract, may be convicted under the first clause of the above section if she dishonestly misappropriates, or converts to her own use, property with which she has been entrusted. (Reg. *v.* Robson, 31 L.J.M.C. 22; L. & C. 93.) But I imagine that she could not be convicted under the latter part of the section for using the property in violation "of any legal contract express or implied." For she could not enter into such a contract expressly, and, of course, none such could be implied. Nor can she be indicted for criminal breach of trust in respect of her husband's property, since she has a joint possession of it with him. (Rulings of Mad. H.C. of 1864 on s. 406.)

Where a person was entrusted with money to buy coals, and he bought them and put them into his cart, and on his way back abstracted part, delivering the remainder as all that the prosecutor was entitled to, a question arose, whether the prisoner could be said to have been entrusted with the property of the prosecutor, so as to satisfy the English Statute. The conviction was affirmed. Some of the Judges held that the coals being purchased with money given by the prosecutor for that express purpose, vested in him, and were held by the prisoner on trust for him. Others thought that a specific appropriation by the prisoner was necessary to vest the property in the prisoner, but the Court was unanimous that if such an express appropriation were necessary it was made out by the facts. (Reg. *v.* Bunkall, 33 L.J.M.C. 75; L. & C. 371.)

There is nothing to prevent one partner being convicted under this section of criminally misappropriating the partnership property. (13 B.L.R. 307, over-ruling 9 W.R. Cr. R. 37.) But of course as each partner has in law full power to deal with all the partnership property for partnership purposes, it requires very distinct evidence to make out that he is dealing with it in such a manner as to amount to criminal breach of trust.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The two ingredients in the offence of criminal Breach of Trust are, first, an original trust, and, secondly, a dishonest misapplication of the trust property.

A trust has been defined by Lord Coke as "a confidence reposed in some other." (Cited Lewen Trusts, 15.) Therefore, where there is no original confidence there is no trust, and a misappropriation, if punishable at all, will be so under s. 403.

"It is a confidence *reposed in some other*; not in some other than the author of the trust, for a person may convert himself into a trustee, but in some other than the *cestui que trust*, or object of the trust, for a man cannot be said to hold upon trust for himself." (Lewin, Ibid.)

In general, there can be no doubt either as to the existence of the trust, or the criminal character of the act by which that trust is violated. Where a clerk intercepts the money he has received on its way to his master, where a banker sells the securities he has taken into deposit from his customer, where a guardian applies to his own use the rents he has collected for his ward, the only difficulty is to prove the fact. Sometimes, however, trusts are created silently, by mere implication of law, and without even the knowledge of the trustee, so that it may be quite a discovery to him when he first learns that he is a trustee. Sometimes, too, the trust is voluntarily created by the trustee, and he may fairly think that it is not binding on him any longer than he chooses to submit to it. In either of these cases an undoubted breach of trust may arise, though it would be very unfair to treat the matter as a criminal offence.

In some cases a trust is raised by implication of law in consequence of facts arising after the date of the original transaction. For instance, the endorsee of a bill of exchange is entitled to sue all the parties to the bill on his own account and without any trust for any other person. But if he were paid the amount of the bill by the drawer, this would not bar him in his action against the acceptor, though any sum which he might receive from the acceptor would be held by him as trustee for the drawer who had made the payment. (Jones *v.* Broadhurst, 9 C.B. 174, 185.) Again, a trust is sometimes implied from a constructive knowledge of facts, of which the trustee is in reality wholly ignorant. For instance, if an estate is bound by a mortgage, a charge for the benefit of children, a lien for the purchase money, or the like, and is transferred without any consideration, then the alienee will be bound by the trust, "whether he had notice of it or not, for though he had no actual notice, yet the Court will imply it against him where he paid no consideration." (Lewin Trusts, 724.) And, although a purchaser for valuable consideration will only be bound where he has had notice of the trust, still equity assumes that he has had notice, if he has been made acquainted with something which ought to have led him to search for an instrument in which the trust was mentioned. (Ibid. 224.) Lastly, even with full knowledge of all the facts, it is often a very difficult question to decide whether there is trust or an absolute gift. For instance, where property is given to a person by words which would convey an absolute interest, but phrases are added expressive of a wish, hope, or entreaty that the property may be applied in a particular way, it is frequently a very nice matter to decide whether such phrases create a binding trust, or may be disregarded altogether. (Ibid. 167.)

I conceive that no universal rule can be laid down as to whether the breach of an implied trust is criminally indictable. Every case will, in my opinion, resolve itself into a question of fact; did the party know that he was in fact holding the property under a trust, and did he wilfully violate that trust, intending thereby to defraud.

The second point which I suggested above relates to cases where a person had by his own act made himself a trustee for some one else. Where this was done for a valuable consideration, as, for instance,

where an insolvent debtor undertook to continue his trade for the benefit of his creditors and to render them an account of his profits, any wilful violation of the trust would be as clearly criminal as if they had put him into their own business as agent. But it might be different where the trust was a voluntary one. Equity will not compel any one to make himself a trustee for another without consideration for so doing, but where he has fully completed the creation of the trust, then it treats the property as actually changed. As Lord Eldon said, in such a case,

"It is clear that this Court will not assist a volunteer, yet, *if the act is completed*, though voluntarily, the Court will act upon it. It has been decided that, *upon an agreement* to transfer stock, this Court will not interpose, but if the party has declared himself to be the trustee of the stock, it becomes the property of the *cestui que trust* without more, and the Court will act upon it." (Ex-parte Pye, 18 Ves. 149.)

On the other hand, in another case Sir J. Wigram laid down the law with greater caution, saying,

"In the case of a formal declaration by the legal or even beneficial owner of property, declaring himself in terms the trustee of that property for a volunteer, the Court might not be bound to look beyond the mere declaration. If the owner of property having the legal interest in himself were to execute an instrument by which he declared himself a trustee for another, *and had disclosed that instrument* to the *cestui que trust* and afterwards *acted upon it*, that might, perhaps, be sufficient." (Meek *v.* Kettlewell, 1 Hare, 470; Gaskell *v.* Gaskell, 2 Y. & J. 502.)

I conceive that the principle laid dawn by Sir J. Wigram is the only one that could be safely acted upon in criminal cases. Suppose a merchant intending to provide for his infant child, were to direct his banker to open an account in the name of the child, and to transfer a portion of his funds into that account, this would according to decided cases amount to an executed trust. But I conceive that no indictment could be maintained against him if he got that account cancelled in a few days after, in order to apply the money to his own use upon some sudden pressure. Of course it might be very different where the trust had been communicated to the party intended to be benefited, so as to lead him to act upon the belief that the property was his own. Here, again, it would be impossible to lay down any general rule. Perhaps the nearest approach to such a rule would be to say, that where a party violates a trust to which he has voluntarily subjected himself, the circumstances must be such as to disclose a moral as well as a legal fraud.

A *bonâ fide* claim of title is an answer to a charge of criminal breach of trust. Where an alleged mortgagee denied the mortgage, it was held that he could not be convicted of criminal breach of trust in respect of the title deeds. (2 Bomb. H.C. 133.)

The general evidence of an embezzlement consists in proof of the receipt of money which is not accounted for, or whose receipt is denied. Under the former Act XIII of 1850, s. 11, proof of a gross deficiency in the accounts of any trustee or public servant was held to be evidence of the offence charged, until explained. But of course no crime would have been committed where the trustee took the

money, *bonâ fide* believing that he was entitled to it, or intending really to advance the interests of the party entitled, and supposing that his act would be ratified when known.

The fact that the defendant has himself a joint interest in the money entrusted to him is no defence if he fraudulently applies it in violation of the terms of the trust. A member of a friendly society was also its paid secretary and honorary treasurer; he received the subscriptions of the members, gave them receipts for the full amounts paid by them, and punctually discharged all demands on the funds of the society, but he made false entries in the account books and applied the difference to his own use. On the fraud being discovered he was called upon for an explanation, when he admitted that he had received the money and said he was willing to repay it by instalments. It was held that he was properly convicted. (Reg. *v.* Proud, 31 L.J.M.C. 71; L. & C. 97.)

Criminal breach of trust by carrier, &c.

407. Whoever, being intrusted with property as a carrier, wharfinger, or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by a clerk or servant.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Where the prisoner, the cashier and collector of a manufacturing firm, had in addition to his salary a per-centage on the profits, but was not liable to the losses of the concern, and had no control over the management of the business, it was contended after conviction that he was not a servant but a partner. But the Court held, that even if the above facts constituted him a partner as regards the public, he was clearly only a servant as regarded his employers, and the conviction was affirmed. (Reg. *v.* Macdonald, 31 L.J.M.C. 67; L. & C. 85.)

Where, however, a committee of the members of two friendly

societies was formed for the purpose of organizing a pleasure excursion, and the prisoner, who was one of the committee, was entrusted with tickets to sell, but received no remuneration for his services, it was held that an indictment which charged him, as the servant of the other members of the committee, with embezzlement was bad. (Reg. *v.* Bren, 33 L.J.M.C. 59; L. & C. 346.) But in such a case the prisoner might be indicted under s. 405, though not under s. 408. And so it was held in the case of a person who was employed to get orders for goods and to receive payment for them, but who was paid by a commission on the goods sold, and was at liberty to get the orders and receive the money where and when he thought proper. (Reg. *v.* Bowers, 1 L.R.C.C. 41; Reg. *v.* Negus, 2 Ibid. 34.)

Where the defendant was a clerk or servant and was as such entrusted with property, a conviction under this section could be supported, although it was no part of his duty to take charge of the property, and although he might have refused to have anything to do with it. (Reg. *v.* Hastie, 32 L.J.M.C. 63; L. & C. 269.) For instance, if an officer were to employ his dressing-boy to draw his pay and disburse his bills out of it, this is a responsibility beyond the range of such a servant's duty which he might fairly decline to accept. But if he accepted it, he would be liable under s. 408 for breach of trust.

This principle was acted on in a recent case. The prisoner was book-keeper of the Madras Male Asylum Press, and, as such, it was no part of his duty to keep the cash. He was not paid for keeping it, and his employers did not know of, and would not have assented to, his keeping it. But, by an arrangement between himself and the Superintendent of the Press, who was the proper Cash-keeper, the prisoner had taken upon himself and discharged the duties of Cash-keeper for about seven years. He was indicted for criminal breach of trust under s. 408, and Scotland, C.J., left it to the jury as a matter of fact whether, having reference to the long course of business in the office, the prisoner had not undertaken the duty of Cash-keeper in addition to his other duties, and assumed a liability to account as Cash-keeper for the monies received in that capacity. He pointed to the words "*in any manner* entrusted in such capacity," as showing that the legislature wished a liberal construction to be put upon the section in cases where the money was, in point of fact, received by the servant as a servant. (Reg. *v.* Vennant, 3rd Madras Sess., 1869.) It will be observed that in the consolidated English Statute (24 & 25 Vict. c. 96, s. 68) the words which occurred in the old Statute "shall *by virtue of such employment* receive any chattel," have been designedly omitted. Accordingly it has been held that the words "employed as a clerk or servant" are wider than those which precede them, and include cases where there is no actual contract of service. Where the prisoner's father was clerk to a local board, and lived with his father, assisted him in his duties, and acted for him in his absence, but was neither appointed nor paid by the board, it was held that he was properly indicted under these words for appropriating money which he had received while so acting. (Reg. *v.* Foulkes, 2 L.R.C.C. 150.)

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant, or agent.

To constitute an offence under this section, the property entrusted to a public servant must be property which as a public servant he was authorized to receive. Therefore, where village officers, who were only authorized to receive money in discharge of the public revenue, received grain from the ryots, agreeing by a private arrangement to treat it as so much money, it was held that they could not be convicted under s. 409. (4 Mad. H.C. Appx. 32.) And, so, if title-deeds were deposited with an attorney, or jewels with a broker, not in their professional capacity, but as friends of the owner, for safe custody, their misappropriation of them would be punishable under s. 406, but not under s. 409.

OF THE RECEIVING OF STOLEN PROPERTY.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which the offence of criminal breach of trust has been committed, is designated as "stolen property." But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Dishonestly receiving stolen property.

Whipping may be inflicted in lieu of the above punishment (Act VI of 1864, s. 2), and, upon a second conviction, whipping may be inflicted in lieu of or in addition to the punishment. (s. 3.)

As to the summary jurisdiction of the Magistrate of the District over this offence, see Crim. P.C., s. 222.

In indictments under this section, the first requisite will be to show that the property was "stolen," within the terms of s. 410. This must be proved by exactly the same evidence as would be requisite if the principal offender were on his trial. Nor can the conviction of such principal be used against the receiver as evidence of the crime having been committed, for he was no party to it and had no power to cross-examine the witnesses (1 Russ. 76), and it would still be perfectly competent to him to prove the innocence of the convicted thief. (Fost. 365.) And, so,

"Where two persons were indicted together, one for stealing and the other for receiving, and the principal pleaded guilty, Wood, B. refused to allow the plea of guilty to establish the fact of the stealing by the principal as against the receiver." (1 Russ. 76.)

Not only must it be shown that the property was originally "stolen property," but also that it continued in that state at the time of the receipt. In one case goods had been stolen, and when the thief was detected they were taken from him, and then restored by the owner's consent, that he might sell them to a person who had been in the habit of buying his booty. When the latter was indicted as a receiver it was held that he could not be convicted, inasmuch as at the time of the receipt the goods were not *stolen* goods. (Reg. *v.* Dolan, 24 L.J.M.C. 59; Dears. 436; see Reg. *v.* Schmidt, 1 L.R.C.C. 15.)

So, also, the goods received must be the identical goods which were stolen, and not something for which they had been sold or exchanged. Where A stole six notes for £100 and changed them into notes for £20, some of which he gave to B, it was ruled that B could not be convicted of receiving, as he had not received the notes which were stolen. (Arch. 373.)

Again, there must be a receipt of the goods. This is in general sufficiently proved by showing that they are in the possession of the accused. But this cannot be laid down as a universal rule. It would always be open to him to show that he was not aware of their being there, or that the place of their deposit was one to which others had as free access as himself. (See *ante* p. 311.) And though there be proof of a criminal intent to receive, and a knowledge that the goods were stolen, if the *exclusive* possession still remain in the thief a conviction for receiving cannot be sustained. For instance, if a jeweller were apprehended in the act of bargaining with a thief for a stolen watch, the offence would not be complete till the purchase was concluded. But the actual manual possession or touch of the goods by the defendant is not necessary to the completion of the offence of receiving. It is sufficient if they are in the actual possession of a person over whom he has control, so that they would be forthcoming if he ordered it. (Arch. 372.) And where the prisoner had received the property knowing it to be stolen, whether for the purpose of

assisting the thief, or for the purpose of concealment, it is equally a crime, although he gains no profit or advantage by the receipt. (2 Russ. 554.)

There may be a receipt by subsequent ratification of the act of another. A wife, in the absence of her husband and without his knowledge, received stolen goods and paid money on account of them. The thief and the husband afterwards met. The latter then learnt that the goods were stolen, and he agreed on the price which was to be paid for them and paid the balance. It was held, that the receipt by him was complete from the time when he ratified and approved of his wife's act, having a guilty knowledge. (Reg. *v.* Woodward, 31 L.J.M.C. 91; L. & C. 122.)

Lastly, and chiefly, a guilty knowledge must be shown. Mere recent possession of the stolen property is not alone sufficient, as such possession (where it proves anything) is in general evidence of stealing and not of receiving. (2 Russ. 555; 3 Ibid. 667, see *ante* p. 312.) This knowledge may be proved by the evidence of the principal felon, produced as a witness for the crown, (his confession would not be any evidence,) (Arch. 207,) or circumstantially, as by showing that the defendant bought them very much under their value, or denied being in possession of them, or the like. So, also, instances of receiving other goods, stolen from the same person by the same thief, are admissible, as it is very unlikely that a succession of such transactions could be carried on without suspicion being raised. (Arch. 372; Steph. Digest of the Law of Evidence, § 11, Act I of 1872, s. 14.)

It will be observed that s. 411 uses the words *having reason to believe* the same to be stolen property. This goes beyond the former law, which required actual knowledge. (Per Scotland, C.J., Reg. *v.* Veeree, Madras Sessions, April 28th, 1862.)

And, therefore, where goods are received by another under circumstances of such equivocal character as ought to have aroused the suspicions of an honest man, the jury would be authorized in convicting.

Where the prisoner is charged with dishonestly retaining stolen property it is not necessary to show that he knew it to be stolen when he received it. It is sufficient to prove that he dishonestly retained it after he acquired that knowledge. (4 Mad. H.C. Appx. 42.)

Under the law, both of England and Scotland,

"A wife cannot be indicted for receiving or concealing the stolen goods brought in by her husband, unless she make trade of the crime and has taken a part in disposing of the stolen goods." (Alison Crim. L. 338; Reg. *v.* Wardroper, 29 L.J.M.C. 116; Bell, 249.)

There is nothing in this Code to protect the wife under such circumstances (see *ante* p. 52), but I conceive it would require very

strong evidence of actual participation in the crime to render a conviction against the wife satisfactory, since her subordinate position in the house makes the mere presence of the goods no evidence whatever against her. (5 N.W.P. 120.)

A husband may be convicted of receiving from his wife. Reg. *v.* McAthey, 32 L.J.M.C. 35; L. & C. 250.) As to whether a person may be convicted of receiving the husband's property from the wife, see *ante* p. 306.

The offence of dishonest retention of stolen property is distinct from the offence of dishonestly receiving stolen property. Guilty knowledge at the time of receipt is not an essential element of the former offence, (Mad. H.C. Rul., 6th April, 1869.)

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person whom he knows or has reason to believe to belong, or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

See Act VI of 1864, ss. 2 & 3, *ante* p. 334.

This section relates to criminals other than the original dacoits, and though it is prudent to add a count framed under it against those who are found in possession of the property, no additional penalty can be inflicted under it upon prisoners who are already convicted under s. 391.

"It has been frequently ruled by the Bengal High Court, that, where stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances which clearly separate the one crime from the other—length of time, or distance for example." (1 W.R.C.C. 48.)

Habitually dealing in stolen property.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for

life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Upon a second conviction for this offence, whipping may be inflicted in addition to the above punishment. (Act VI of 1864, s. 4.)

It is difficult to say what sort of evidence will be admissible and sufficient to procure a conviction under this section. At the very least two acts of receiving or dealing in stolen property must be proved or presumed; and these acts must be at some little distance of time, otherwise they could not be taken as establishing a habit. Where a man had been several times actually convicted this would, of course, be sufficient, and the previous convictions would be the best evidence against him, since having been himself a party he could not dispute them. Previous convictions need not be proved by production of the record. It is sufficient if the fact be certified by the clerk of the Court, or other officer having the custody of the records of the Court where the conviction took place, or his deputy. (Act XV of 1862, s. 9.) Where there have been no convictions the acts which are relied on as evidencing a habit must in general be proved, just as if each were the subject of a separate indictment. Sometimes this might not be absolutely necessary. If it could be shown that a man kept a shop which was frequented by persons who were and who must have been known by him to be thieves; if the nature of the goods which he purchased, the price which he paid, the precautions with which the goods were bought, kept, or disposed of; the contrivances employed in the premises for concealment, for rapid exit, and for preventing entrance, and other similar circumstances gave strong evidence of a general nature of the trade pursued, even a single instance of receiving brought home for the first time might be sufficient to warrant a conviction. But it would always be necessary to watch such evidence very narrowly.

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Assisting in concealment of stolen property.

I imagine that this section is intended to apply to cases where there has not been such a possession as would support an indictment against the party, as a receiver, under s. 411. Where there has been such a possession, the offence of receiving will be complete.

"Even though the goods be retained for the shortest time, or though the object be not permanent possession, but temporary concealment." (Alison Crim. L. 333.)

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OF CHEATING.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Cheating.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c*) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d*) A, by tendering in payment for an article a bill on a house with which A keeps no money and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and, therefore, dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money intends to deliver the indigo plant and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) ... intentionally deceives Z into a belief that A has performed A's p... a contract made with Z which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Cheat by personation

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a) A cheats by pretending to be a rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating.

Where several false statements are made which result in a person being cheated, it is no objection that some of them are not legally indictable, if there is any one which is criminal and by means of which the property was obtained. (Reg. *v.* Jennison, 31 L.J.M.C. 146; L. & C. 157.)

Under the English law a false statement as to a future fact did not constitute the offence of cheating. Therefore, a pretence that the party would do an act which he did not mean to do, as, for instance, a pretence that he would pay for goods on delivery, was not indictable. (Arch. 406.) And, so, it was laid down in Scotland, that "the most extensive fraud committed by merely ordering goods on credit and not paying for them, without any false representation, did not fall under this species of crime." (Alison Crim. L. 362.) This is not the case under the present Code, as appear from illustrations *(f)* and *(g)*, in both of which a false pretence as to an intention

is held to constitute the crime. This may create a great deal of difficulty. Whenever a contract is entered into, each party leads the other to believe that he intends to perform his own part. If he subsequently fails there will be nothing to prevent an indictment being laid under this section, and the only question will be whether at the time of making the contract he intended to carry it out. In my opinion, the only safe rule to lay down will be, that mere breach of contract is not even *primâ facie* evidence of an original fraudulent intention. (Affirmed by the Madras High Court, Cr. P. 90 of 1863, and per Scotland, C.J., in Reg. *v.* Wilson, 2nd Madras Sessions, 1870; Acc. 9 Bomb. H.C. 448; 3 N.W.P. 16, 17.) It will lie upon the prosecution to establish this intention affirmatively; as, for instance, in the case of a borrower that he was hopelessly insolvent when he contracted the loan, and had no expectation of being able to repay it. (See Ex. p. Bayley, 3 L.R. Ch. 244.) In the case of a contract to deliver goods that the person never had the means to deliver them, and never took any steps to procure them. It must be recollected that where an act is in itself innocent, but may become unlawful by being done with a particular intention or under particular circumstances, the presumption of innocence prevails till the facts which destroy it are proved. (See *ante*, pp. 78, 136.)

A very common difficulty that arises on indictments for cheating is where the false statement is made in the progress of a sale. Sellers are so apt to ascribe an extravagant value and fictitious qualities to their own wares, that almost every purchase might form the subject of an indictment if praises of an article which turn out to be false could be charged as a crime. On the other hand, if a man gets my money by professing to give me one article when he really gives me another, as in the case of the wooden nutmegs which Yankee pedlars are said to vend, this is as heinous a fraud as any which we have mentioned. The difficulty is to draw the line. In England, the rule seems to be that no misrepresentation is sufficient, unless it is a false statement of a definite fact which forms the substance of the contract.

For instance, where the prisoner induced a pawnbroker to advance him money upon some spoons which he represented as silver-plated spoons, which had as much silver on them as "Elkington's A," (a known class of plated spoons,) and that the foundations were of the best material—the spoons were plated with silver, but were, to the prisoner's knowledge, of very inferior quality and not worth the money advanced upon them—it was held that the conviction was bad. Lord Campbell, C.J. said,

"Here, the statement made by the prisoner resolves itself into a mere representation of the quality of the things sold. We must also bear in mind that the articles sold were of the species which they were represented to be, because they were spoons with silver on them, and the purchaser obtained those spoons, though the quality was not what it was represented to be. Now, it seems that it never could have been the intention of the legislature to make it an indictable offence for the seller to exaggerate the quality of the goods he was selling, any more than it would be an indictable offence for the purchaser during the bargain to depreciate their quality, and to say that they were not equal to what they really were, and so to induce the seller to part with the goods at a lower price."

Lastly, we may quote the observations of Erle, J. who said,

"Looking at all the cases we have been considering, those that have been the subject of the greatest comment seem to me to fall within the principle that where the substance of the contract is falsely represented, and by reason of that the money is obtained, the indictment is good. Where the ring was sold, as in the Queen *v.* Ball, and the chain, as in the Queen *v.* Roebuck, it was to be a silver ring and a silver chain. Silver was of the substance of the contract. In the Queen *v.* Abbot the substance of that contract was not cheese of any quality, but a cheese of the particular quality shown by the taster. In the Queen *v.* Kenrick the fact that brought that case within the definition was that the man asserted that the horses had been the property of a lady deceased, were now the property of her sister, and had never belonged to a horse-dealer, and were quiet to drive. The purchaser wanted the horses for a lady of his family, and the essence of that contract was that they were horses which had been the property of a lady who had driven them. It was a false assertion of an existing fact. This appears to me not to be a right conviction, because it is not an affirming of a definite triable fact to say that the goods are equal to Elkington's A, but the affirmation is of what is mere matter of opinion, and falls within the category of untrue praise of the article intended to be bought." (Reg. *v.* Bryan, 26 L.J.M.C. 84 ; D. & B. 265.)

On the other hand, where the defendant, knowing that a particular piece of jewellery was only 6-carat gold, falsely represented that it was 15-carat gold, and thereby induced the prosecutor to purchase it, this was held to be a statement of a fact and not of an opinion, and the conviction for cheating was upheld. (Reg. *v.* Ardley, 1 L.R. C.C. 301.)

The refinements developed in some of the English cases are attacked with much vigour by the learned editor of Russell, and his remarks (2 Russ. 665 n.) apply with still greater force to the Indian law. He says,

"One error, in some cases, seems to have been to consider the pretence, apart from the finding of the jury, that it was made with intent to defraud. One man may extol an article innocently and another fraudulently in similar terms, but the latter alone is within the Statute."

"As to the distinction between a representation that articles are better in point of quality, and a representation that they are entirely different from what they really are, there is nothing in the Statute which warrants any such distinction. What the Statute requires is, that there shall be a false pretence. (*By* s. 415, "*a deceiving.*") Then is a representation as to quality a pretence? Possibly, where such a representation is made on the mere inspection of an article it may be rather a matter of opinion than a pretence. But, where it is made with a full knowledge of the quality of the article, it is not opinion (for opinion must cease when knowledge exists) but an affirmation of a known fact, in other words a pretence."

"As to the remark, that if extolling goods be within the Statute depreciating them must be so also, the answer is, that if a person were to induce an owner to part with his property by falsely representing it as of inferior value, the case would clearly be within the Statute if the representation were made with intent to defraud. Suppose a veterinary surgeon represented that a valuable race-horse had a fatal disease when he well knew that it had not, and by that means obtained it at the price of a useless horse, with intent to defraud the owner, the case would clearly be within the Statute."

A passenger by railway travelling in a carriage of a higher class than that for which he has paid is not guilty of cheating under the Penal Code, but is indictable under the Railway Act XVIII of 1854, s. 3. (1 Bomb. H.C. 140.)

The Penal Code goes beyond the English law not only as to the nature of the pretence but also as to its object. By English law the object must be to obtain goods, money, or some valuable security. But, under s. 415, the offence is completed if the prosecutor has been induced to alter his position in any way which may cause him damage or harm in body, mind, reputation, or property. For instance, it has been held in Bengal that to induce a high caste man to marry a low caste woman, by pretending that she was of higher caste, is cheating by personation within the meaning of s. 416. (3 R.C.C.C.R. 32.) If a person, by pretending to be a lawyer, were to induce another to entrust a suit to his management, that would be indictable under the Code, even although no fee was received, but it would be no offence in England. In a recent case, Pollock, C.B., expressed his opinion that the Statute "was not intended to control commerce by indictments for obtaining money under false pretences unless where the matter really and wholly was a piece of swindling, and that it was never meant to apply where there was merely some fraud committed in the course of a commercial transaction." (Reg. *v.* Evans, 32 L.J. M.C. 40; L. & C. 252.) But, under the Code, if, in the course of a genuine mercantile transaction, one party were by a false statement to lead the other to incur some loss, or risk of loss, an indictable offence would have been committed. And, even under English law, Willes, J., recently said, "since the cases of Reg. *v.* Abbot (1 Den. 273) and Reg. *v.* Burgon (D. & B. 11) it is impossible to contend seriously that the case is not within the Statute because the chattel is obtained under a contract induced by a false pretence. (Reg. *v.* Martin, 1 L.R.C.C. 61.)

It is not necessary that the pretence should be in words; the conduct and acts of the party will be sufficient without any verbal representation. Thus, if a party obtain goods from another upon giving him in payment his cheque upon a banker, with whom in fact he has no account, this is a false pretence within the meaning of the Act, and so it is, if he knows that his account is overdrawn, and that the cheque will not be honoured. (Reg. *v.* Haselton, 2 L.R.C.C. 134.) And, similarly, where a man assumed the name of another, to whom money was required to be paid by a genuine instrument. So, where a person at Oxford, who was not a member of the university, went, for the purpose of fraudulently obtaining credit, wearing a commoner's gown and cap and obtained goods, this was held a sufficient false pretence, though nothing passed in words. (Arch. 405-6.)

Again, the money must have been obtained or the change of conduct must have been brought about by means of the false pretence. And, therefore, as laid down above by Erle, J., the statement must be as to something which is of the substance of the contract; for if it were a mere unimportant and irrelevant assertion, it could not be assumed that it had been an operating inducement. So also the statement must have been believed, otherwise it clearly could not have had any weight with the party to whom it was addressed. In a recent case it appeared that the prisoner had knowingly over-stated the amount of work he had done, with a view to get more than his proper amount of wages. The prosecutor paid him the money, knowing his statement to be untrue. On appeal Cockburn, C.J. said,

"The conviction cannot be supported. Here the prosecutor knew that the pretence was false. The question in this case is, what is the motive operating on the mind of the prosecutor to induce him to make this payment? If it is a belief in the prisoner's false statement, the offence of obtaining money under false pretences is made out; but it is not so, if, as in this case, the motive be a mere desire to entrap the prisoner without such belief." (Reg. *v.* Mills, 26 L.J. M.C. 79; D. & B. 205.)

It is an offence to obtain land from a Revenue Officer by falsely representing that it is waste. (6 Mad. H.C. Rul. 12.) It would also be an offence to gain admission into a train or an Exhibition by a false pretence of having a ticket. But it would not be the offence of cheating if the person got in unobserved. (6 Bomb. C.C. 6.)

Lastly, the false pretence must be used with a view to defraud. This will in general be assumed from the fact that a fraud was effected. On the other hand, a case might be imagined where it could be shown that the party merely intended a practical joke, or had some collateral object in view, but no intention of cheating any one. In one case the following curious state of facts appeared. The prosecutor owed the prisoner's master a sum of money, of which the latter could not obtain payment, and the prisoner, in order to secure to his master the means of paying himself, had gone to the prosecutor's wife in his absence and told her that his master had bought of her husband two sacks of malt and had sent him to fetch them away, upon which she delivered them up. Coleridge, J., told the Jury,

"Although, *primâ facie*, every one must be taken to have intended the natural consequence of his own act, yet if, in this case, you are satisfied that the prisoner did not intend to defraud the prosecutor, but only to put it in his master's power to compel him to pay a just debt, it will be your duty to find him not guilty. It is not sufficient that the prisoner knowingly stated that which was false and thereby obtained the malt. You must be satisfied that the prisoner at the time intended to defraud the prosecutor." (2 Russ. 688.)

This *dictum* was a good deal relied on in a case at Madras, The Queen *v.* Longhurst. There, the prisoner had confessed the fact that he had introduced an overcharge for coolies and obtained money thereby. He attempted, however, to set up as a defence that he had paid certain money out of his own pocket on a contract for goods supplied to the Railway Company; that, through a mistake in his accounts, he had omitted to charge it at the proper time, and that afterwards, being afraid of incurring blame for this irregularity, he had adopted this indirect way of reimbursing himself. Hence, no fraud was practised upon his employers, the only result of the false pretence being that they had paid money for one thing which was really due for another. Bittleston, J., refused to receive the evidence, on the ground that it could form no defence. On the above case being cited he distinguished it on two grounds, First, that, in the case quoted, the debt was admitted to be a just one, whereas here it had never been even brought to the knowledge of the Railway Company. Secondly, that in the former case it did not appear that the prisoner ever intended to deprive the owner permanently of his malt, but merely to detain it temporarily, as a means of putting the screw upon him, to make him pay. (Reg. *v.* Longhurst, 4th Sessions, 1858.) The Latter, I conceive, to be the true ground.

In a more recent case the defendant was indicted for obtaining a carriage from the prosecutor by false pretence. He admitted the fact, but said that the prosecutor owed him money, and that he got the carriage in order to compel payment. Bittleston, J., in charging the Jury, said,

"I advise you not to convict unless you are satisfied that the prisoner obtained the property intending absolutely to apply it to his own use. If you think he did not obtain it with the intention of keeping it, but of putting a screw upon the prosecutor to make him pay the money due by him, then I think he is not guilty of the offence. The prosecutor admits that there was a debt due, and there is evidence of an arbitration between them as to a money dispute. If you think it was merely a trick resorted to for the purpose of pressure, then I recommend you to acquit. It is very dangerous to convict upon a criminal charge, where the case comes merely to a matter of civil dispute." (Reg. *v* Sheik Ahmed, 4th Sessions, 1860, Madras.)

It will be remembered that the above indictments were under the old law. I am, however, inclined to think that all such cases would come under s. 415. The offence under this section consists of cheating a person into delivery of the property, and the mode in which it was intended to use it, or the length of time during which it was to be kept, seem to me to be immaterial. It was different under the English Statute. There, the crime consisted in obtaining the article by false pretences "with intent to cheat or defraud any person of the same." It might fairly be said that there was no such intention if the possession of the article was not to be permanent, and if no loss in respect of it was ever to be inflicted upon the owner. Under the present Code the test is the honesty of the means by which the change of possession was effected, not the object which the accused had in view. Even in England, it is no defence to a charge of cheating that the prisoner when he got the goods into his possession by the false pretence intended to pay for them, whenever it should be in his power to do so. (Reg. *v.* Naylor, 1 L.R.C.C. 4.)

Where the question is, whether a defendant made the false statement with an intention to cheat, evidence that he had made similar false statements a short time previously and obtained money by them is admissible, if it tends to show that on the occasion, which is the subject of enquiry, he was acting with a guilty knowledge; if not it is inadmissible. For instance, where a prisoner was charged with obtaining money from a pawnbroker by the false pretence that a piece of worthless jewellery consisted of real stones, evidence that he had two days before obtained money from another pawnbroker on the pledge of a chain which he represented as real gold when it was not, was held to be rightly received. The Court said, "It tends to shew that he was pursuing a course of similar acts, and thereby it raises a presumption that he was not acting under a mistake. It is not conclusive, for a man may be many times under a similar mistake, or may be many times the dupe of another; but it is less likely he should be so often than once, and every circumstance which shows he was not under a mistake on any one of these occasions strengthens the presumption that he was not on the last." (Reg. *v.* Francis, 2 L.R.C.C. 128.)

On the other hand where the false pretence alleged was that the prisoner had authority to receive money, evidence that he had a few

days before obtained another sum of money by a similar false pretence as to his authority was held inadmissible (Reg. *v.* Holt, 30 L.J.M.C. 11; Bell, 200) as Blackburn, J., remarked in the previous case, (2 L.R.C.C. 130.) "There the alleged false pretence was an assertion of authority to receive the money, and the question was authority or no authority. The evidence was wholly irrelevant." The facts in the last case established that the prisoner had been expressly forbidden to receive the money, therefore no question as to guilty intention could arise. But if upon the facts it might have been doubted whether he did not really suppose that he was authorized to receive payment, then I imagine evidence would have been properly admitted to show that on a former occasion, he had not only set up such an authority, but had given a false statement of the mode in which the authority had been conferred upon him. (See too Act I of 1872, ss. 11, 54; 11 Bomb. H.C. 90.) A fraudulent intent is necessary. Therefore, where a person, who had agreed to sell land, set out to register the conveyance, but fell ill on the way and sent on another person who had the deed registered in his name by personating him, it was held that the defendant had committed an offence under s. 93 of Act XX of 1866, but not under s. 419. (2 B.A. Cr. 25.)

The offence of cheating can only be tried by the Court within whose jurisdiction the cheat took place. It cannot be tried by any Court into whose jurisdiction the property fraudulently obtained has been brought. (Reg. *v.* Stanbury, 31 L.J.M.C. 88; L. & C. 188.)

Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect.

418. Whoever cheats, with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law or by a legal contract to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

This section would apply to cases of cheating by a guardian, trustee, solicitor, or agent, by the Manager of a Hindoo family, or the Karnaven of a tarwad in Malabar.

Punishment for cheating by personation.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or any thing which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cheating and dishonestly inducing a delivery of property.

OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

422. Whoever dishonestly or fraudulently prevents any debt or demand, due to himself or to any other person, from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing from being made available for his creditors a debt or demand due to the offender.

It is difficult to see the distinction between these sections and ss. 206-208. (See *ante* pp. 174, 175.) The words in s. 421 which refer to the "distribution of property according to law among creditors" seem to relate to the procedure in insolvency, which is the only case in

which property is so distributed. Their effect may be to render criminal what is known in bankruptcy by the term fraudulent preference. The policy of the bankrupt and insolvent laws is to ensure to every creditor a proportional share of his debtor's estate. Therefore

"*Primâ facie*, a trader who, on the eve of bankruptcy, hands over to a creditor assets which ought to be rateably distributed among all his creditors, must be taken to have acted in fraud of the law. But if circumstances exist which tend to explain and give a different character to the transaction, and to show that the debtor acted from a different motive, these circumstances must be left to the jury, who should be told that unless they come to the conclusion that the debtor had the intention of defeating the law and preventing the due distribution of his assets, by preferring one creditor at the expense of the rest, the transaction will stand good in law." (Per Cockburn, C.J., Bills *v.* Smith, 34 L.J.Q.B. 68, 72.)

In that case the insolvent had repaid a considerable sum of money when hopelessly embarrassed, but it was found that he did so not from any fraudulent intention, but merely in pursuance of a previous undertaking to pay on that day. The Court pointed out that the absence of pressure by the creditor was only material as raising a presumption of fraudulent intention; but that that presumption might be equally rebutted by any other circumstances, which tended to show that the desire to give a fraudulent preference was not the motive operating upon the debtor in handing over his assets to the particular creditor.

Accordingly, Sir Mordaunt Wells is reported to have said at the sitting of the Calcutta Insolvent Court on the 11th January 1862, that before going into the business of the day there was a matter of great importance which he wished to announce publicly. As that was the first Insolvent Court day held after the passing of the Penal Code, and as it might not be generally known that there were two sections in the Code which would materially affect parties who came into that Court for protection after making over their property to their relations or friends, he thought it right to state the course he intended to take in respect to such cases in future, armed as he was with the power vested by the new law. The sections were 421 & 423 introduced into the Penal Code, and he was quite certain that if those sections were properly worked they would tend most materially to strike at the root of the *benamee* system, and he considered it his duty to state thus publicly the course he intended to take with reference to those sections. He then read ss. 421 & 423, and proceeded to observe that it was his intention in every *benamee* transaction in which he was satisfied that it was a *benamee* transaction, and done with a view to defeat the creditors in getting at the property, to direct the parties to be prosecuted before the magistrate, not only the insolvent, but the parties connected with such transactions.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and

Dishonest or fraudulent execution of deed of transfer contain-

ing a false statement of consideration.

which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Two ingredients are required to make up the offence in this section. First, a fraudulent intention, and, secondly, a false statement as to the consideration for the document or the person in whose favour it is to operate. The mere fact that an assignment has been taken in the name of the person not really interested will not be sufficient. Such transactions, known in Bengal as *benamee* transactions (see 6 M. I.A. 53) have nothing necessarily fraudulent. But if a debtor were to purchase an estate in the name of another for the purpose of shielding it from his creditors; or to execute a mortgage deed, reciting a fictitious loan (1 R.C.C. Civ. 95); or if the manager of an Hindu family, assigning the family property without any necessity, were to insert in the deed a statement that the assignment was made to pay the Government dues, or to discharge an ancestral debt; this would be such a fraudulent falsehood as would bring his act within s. 423.

Dishonest or fraudulent removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Such acts as the removal by a tenant of his furniture or crops to avoid a distress for rent, or a release of a debt by one of several executors, partners, or joint-creditors, to the injury of the others, and without their consent, would come within this section. And so it has been held that one partner may be convicted under this section for dishonestly removing the partnership account books, in fraud of his co-partners. (13 B.L.R. 308, n. 2.)

OF MISCHIEF.

Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any per-

son, causes the destruction of any property, or any such change in any property, or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a*) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b*) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e*) A, having insured a ship, voluntarily causes the same to be cast away with the intention of causing damage to the underwriters. A has committed mischief.

(*f*) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h*) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Neglect on the part of an owner of cattle to fence his field, in consequence of which the cattle stray into his neighbour's field, is not mischief within *illus.* (*h*). There must be an act done, causing the cattle to enter with knowledge that damage will ensue. (6 B.L.R. Appx. 3; 6 Mad. H.C. Rul. 37.) Nor is it mischief to graze cattle upon waste land without paying Government fees, (5 Mad. H.C. Rul. 30) or to open an irrigation sluice at the time at which it should have been closed as regards the defendants and open for other cultivators, the remote loss to the property of others which might follow from such an act not being such a destruction as the section contemplates. (7 Ibid. 39.)

Punishment for committing mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

A prisoner charged with the theft and killing of two sheep under the value of Rs. 10 can only be dealt with under this section. (Rulings of the Madras Sudder or High Court, 9th May, 1853.)

See note to s. 277, *ante* p. 222.

Committing mischief and thereby causing damage to the amount of 50 Rupees.

427. Whoever commits mischief, and thereby causes loss or damage to the amount of fifty Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

See as to the summary jurisdiction of the Magistrates of the District over this offence. Crim. P.C., s. 222.

Mischief by killing or maiming any animal of the value of ten Rupees.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any animal or animals of the value of ten Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Mischief by killing or maiming cattle, &c., or any

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may

animal of the value of 50 Rupees.

be the value thereof, or any other animal of the value of fifty Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

A calf does not come within the terms "bull, cow, or ox," and, therefore, if not worth Rs. 50, its destruction must be dealt with under ss. 426 or 428, according to its value. (Reg. *v.* Cholay, per Scotland, C.J., 4th Madras Sessions, 1864.)

Mischief by injury to works of Irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Where a person levelled, filled up, and cultivated a water-course over his own lands which conveyed water to the land of the prosecutor, it was held that this act was mischief within the meaning of s. 425 if the defendant knew that the prosecutor was entitled to the water and that by this act his right would be obstructed. (2 R.C.C. C.R. 47.) On the other hand, it has been held in Madras that a person who commits an offence coming within the words of this section, for instance stopping up an irrigation channel and thereby preventing a flow of water to a neighbour's field, must be charged under it, and not under the general s. 426. (Mad. H.C. Rul., 11th Aug. 1871; 6 Mad. Jur. 452.) A difference of jurisdiction arises according to the section under which the charge is framed.

Acts done under a *bonâ fide* claim of right are not within this section. But it is not necessary that they should be merely wanton acts of waste. (1 Mad. L.R. 262.)

Mischief by injury to public road, bridge, or river.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either

description for a term which may extend to five years, or with fine, or with both.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

The act which is charged as an offence under this section must be itself a mischievous act at the time that it is done, the likelihood that an inundation or obstruction to drainage may follow being merely a circumstance of aggravation. Therefore, where a man erected a dam across a river, which in itself neither caused the destruction of any property, nor any such change in any property or its situation as destroyed or diminished its value or utility, or affected it injuriously, he was held not punishable under s. 432, though the Magistrate found, as a fact, that he knew that the dam was likely to inundate other adjacent villages. (4 Mad. H.C. Appx. 15.)

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, or rendering less useful a light-house or sea-mark, or by exhibiting false lights.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either descrip-

Mischief by destroying or moving, &c., a land-mark fixed by public authority.

tion for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive substance with intent to cause damage to the amount of 100 Rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See Cr. P.C., s. 89, *ante* p. 106.

Mischief by fire or explosive substance with intent to destroy a house, &c.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

See Cr. P.C., s. 89, *ante* p. 106.

Mischief with intent to destroy or make unsafe decked vessel or a vessel of 20 tons burden.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Whoever commits or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in the last section when committed by fire or any explosive substance.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for intentionally running vessels aground or ashore with intent to commit theft, &c.

440. Whoever commits mischief, having made preparation for causing to any person death or hurt or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

CRIMINAL TRESPASS.

441. Whoever enters into or upon property in the possession of another, with intent to commit an offence (*see* s. 40, *ante* p. 25), or to intimidate, insult, or annoy any person in possession of such property; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass.

Criminal trespass.

This section is singularly vague. Suppose a person goes to pay a visit to a friend in order to retail a piece of scandal which would come under the section as to defamation, is this criminal trespass? According to the definition it is, for he enters into property which is in the possession of another with intent to commit an offence. Again, if a thief goes to the house of a receiver for the purpose of parting with his booty and does so, here he is committing an offence, namely, abetting the crime of the receiver, but is he also committing a criminal trespass? I conceive that the section must be limited to cases where the entry is in itself part of the unlawful act, and is either expressly or impliedly against the will of the owner of the property. For instance, suppose a man were to go upon the premises of another with intent to steal his money, to abduct his daughter, to lame his horse, or the like, here the entry would be inseparably connected with the offence aimed at and would be against the will of the owner.

Of course, an authority to enter may be revoked, either expressly or by implication. No authority to remain can be assumed to last after the person who was authorized to enter for one purpose proceeds to employ this opportunity in the commission of an offence for which he has not got the permission of the owner of the property. Therefore, if a guest were to proceed to pick the lock of his entertainer's desk for the purpose of taking his money, this would be an "unlawful remaining in the house with intent to commit an offence," and, therefore, would be "house-trespass." But if he employed himself, in conjunction with the proprietor, in illicit coining, this would be indictable as a substantive offence, but the mere continuance in the house could not be called "an unlawful remaining" in it, since of itself it was not unlawful.

The offence of criminal trespass is only committed where some criminal intent is present to the mind of the person charged, and under some sections of this chapter (ss. 449, 451, 454, 457), the punishment varies according as the prisoner is convicted of intending to commit one crime or another. Of course, there must be circumstances in the case which lead to the presumption that the prisoner had any criminal intent, or the particular intent with which he is charged, as no criminal intent can be assumed in the absence of proof. But it must not be assumed that for this purpose it will always be necessary to adduce independent evidence different from that which makes out the substantive offence. For instance, if a man is found in the middle of the night in another's house, this of itself is ample evidence to convict him, not merely of house-breaking by night, but of doing so with intent to commit theft. On the other hand, independent circumstances might lead to the conclusion that his object was to commit adultery, or even murder. So, if a party were found enjoying themselves at a picnic upon another man's land this would not be even *primâ facie* evidence of a criminal trespass. But if it was shown that they had gone there in open defiance of a previous prohibition, that might be taken as evidence of an intent to insult or annoy.

There is a distinction between an act which is unlawful and an act which is an offence. Therefore, entry upon land with intention to do that which the civil law will prevent or punish does not constitute

criminal trespass. For instance, the cultivation of Government waste land without permission (4 Mad. Jur. 205, but see 5 Mad. H.C. Rul. 17?) or the re-entry upon land from which a person has been ejected by civil process (6 Mad. H.C. Rul. 19), or the entering of an Exhibition building without a ticket (6 Bomb. C.C. 6), are not acts which of themselves and without proof of any further intent are punishable under s. 411.

When a man who was not entitled to the use of a burial ground ploughed up part of it, the Court held that the offence was committed, as his intent must be inferred from the nature of his acts, and it was scarcely possible to conceive any act more calculated to cause annoyance than the act of ploughing up a burial ground. (6 Mad. H.C. Rul. 25.) In that case, the Court assumed the burying ground to be in the possession of a corporate person whom it was intended to annoy, viz., the portion of the public who were entitled to be buried there. On the other hand, where a man ploughed up part of a public footpath, the Court refused to confirm a sentence under s. 441. (Ibid. 26.) They appear to have distinguished it from the last case on the ground that the defendant was himself one of the public who were entitled to the use of the footpath, and they were unable to say that there was an illegal entry on property in the possession of another with intent to annoy the person in possession. The defendant, they said, might have been indicted for a nuisance under s. 283 or dealt with under the Crim. P.C., s. 20. It is certainly difficult to see how any one could be in possession of a public footpath except the person who was walking upon it. With regard to the burial ground, of course it was possible that the public, other than the corpses, might be in possession of it by a care-taker or otherwise. But I should have imagined that the intent which the law would infer from cultivating another man's land would be merely an intent to procure improper gain for oneself, and that a further intent to annoy would have to be made out by something like evidence.

Very nice questions might arise as to what amount to a "possession," where the party in possession has no title and the alleged trespasser has. In a recent case Sir B. Peacock, C.J. said,

"A trespasser cannot, by the very act of trespass, immediately and without acquiescence on the part of the owner, become possessed of the land or house upon which he has trespassed and which he tortuously holds. But, if he is allowed to continue on the land or house, and the owner of the same sleeps upon his rights and makes no effort to remove him, he will gain a possession, wrongful though it be, and cannot be forcibly ejected. The rightful owner cannot, in any case, when he has a right of entry, be made responsible in damages for a trespass upon his own land, for he is not a trespasser if he has a right to go upon it. But if he assaults and expels persons who, having originally come into possession lawfully, continue to hold unlawfully after their title to occupy has been determined, he may be made responsible for the assault and indicted for the forcible entry." (3 R.C.C.S.C. 5.)

So, the Madras High Court ruled that "the actual possession intended by the Criminal Pro. Code (Ch. XXII) does not include the occupancy of a mere trespasser." (6 Mad. H.C. Rul. 13.) And, so, in Bombay, Melvill, J., citing the Roman law, and Brown *v.* Dawson, 12 Ad. and Ell. 624, 629, laid it down that the possession of a trespasser was not sufficient to support an action under s. 15 of Act XIV of 1859. (7 Bomb. A.C. 82.) See, too, Blades *v.* Higgs, 30 L.J.C.P.

346; Lows *v.* Telford, 1 App. Ca. 414. Ex parte Fletcher 5 Ch. D. 809, in which the distinction is pointed out between, the possession of a mere trespasser, and of one who is legally entitled to possession, even though in the latter case the possession may have been obtained forcibly, and recently. In a case reported at 6 Bomb. C.C. 30, the side note is, "a Magistrate, under s. 318 of the Cr. P.C., is to enquire into the question who is in actual possession of the property in dispute, *without considering how that possession has been obtained.*" The words in italics, however, are not in the judgment. The possession was obtained peacefully under a power of attorney, and with the asserted consent of the tenant. This assent was a matter in dispute, and so was the right to retain possession. But this was merely matter of title, which the Court properly decided that the Magistrate should not go into.

Under the Cr. P.C., s. 534, and by Act X of 1875, s. 142, it is provided, that "whenever, in any Criminal Court, a person is convicted of an offence attended with criminal force, and it appears to such Court that by such criminal force any person has been dispossessed of any immoveable property, the Court may order such person to be restored to possession. No such order shall prejudice any right over such immoveable property which any person may be able to show in a civil suit."

An entry upon land which a man believes to be his own will not be a criminal trespass, though the land was in the possession of another, if the object really was to assert a right over it, and not to intimidate, insult, or annoy the other, unless under circumstances which amount to the offence of unlawful assembly. (See s. 141, *ante* pp. 117, 124; 8 B.L.R. Appx. 62; 2 N.W.P. 82.) And, so, where a man had been exercising a right of fishery for a considerable time, alleging a prescriptive right, the mere fact of continuing to do so after a notice of prohibition is not criminal trespass. (9 B. Appx. 19.) The infringement of an exclusive right of fishery in a public river can never be a criminal trespass, as the river cannot be in the exclusive possession of any one, and a right of fishery is not property of which a person can be said to be in possession within the meaning of the section. (2 Calc. 354).

The words "intimidate" and "insult" refer, of course, to such criminal acts as are provided for by ss. 503, 504; the word "annoy" is not defined in the Code. The expression, by its own force, merely conveys the idea of a certain discomposing effect upon the mind, without any relation to the legality or otherwise of the discomposing cause. Nothing can be more annoying than to be repeatedly dunned for a debt which it is out of our power to pay. The word here must, however, refer to acts of illegal annoyance, and probably conveys no more than the two words which precede it.

The section does not appear to include any cases of trespass to personal property. The language is inconsistent with such a construction, particularly the words "having lawfully entered into or upon such property, remains there, &c." Nor does it apply to cases where the possession of the prosecutor is only constructive. The intention must be to intimidate, &c., a person actually in possession of the premises. (8 B.L.R. Appx. 62.)

442. Whoever commits criminal trespass, by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

House-trespass.

Where the premises in question had been occupied as chambers, but at the time of the offence and for some time previously were unoccupied, it was held that they were properly described as "a human dwelling." (Reg. *v.* Abboyee, Scotland, C.J., 4th Mad. Sess. 1862.)

A large detached circular receptacle for grain, constructed of straw, with an opening at the top, and situated in a back yard, was held not to be "a place for the custody of property" within the meaning of this section. Therefore, the offence of house-breaking could not be committed in respect of it. The offence really committed was the dishonest breaking open of a closed receptacle containing property, under s. 461. (Rulings of Mad. H.C. on s. 457, 1865.)

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute "house-trespass."

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

Lurking-house-trespass.

Any person who commits an offence defined by ss. 443 to 446 in order to the committing of an offence punishable with whipping under Act VI of 1864, s. 2, may be whipped in lieu of the punishments specified in the Code (Act VI of 1864, s. 2), and upon a second conviction may be whipped in lieu of, or in addition to, such punishment. (Ibid. s. 3.) Upon a second conviction for the same offences, if committed for the purpose of committing an offence punishable with whipping under s. 4, he may be whipped in addition to the punishment provided for a breach of ss. 443-446. (Ibid. s. 4.)

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

Lurking house-trespass by night.

445. A person is said to commit "house-breaking" who commits house-trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence (*see* s. 40, *ante* p. 25), or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

House-breaking.

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Therefore a conviction was sustained when the prisoner was caught inside the prosecutor's house at night, and the evidence showed that he could only have effected an entrance by scaling a wall. (4 R.J. & P. 566.)

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force, or committing an assault, or by threatening any person with assault.

Even if a party has got admission into a house through an open door it will still be house-breaking, should he afterwards break or unlock any inner door for the purpose of entering any other room. But the mere breaking open of a box or chest would not constitute this offence (Arch. 424,) though it would be punishable under s. 461.

And see note to s. 442, *ante* p. 358.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a*) A commits house-trespass by making a hole through the wall of Z's house and putting his hand through the aperture. This is house-breaking.

(*b*) A commits house-trespass by creeping into a ship at a port-hole between the decks. This is house-breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f*) A finds the key of Z's house door which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g*) Z is standing in his door-way, A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

But an entry into the house is necessary, an entry upon the roof is not sufficient. (Mad. H.C. Rul., 17th March, 1866.)

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

House-breaking by night.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

Punishment for criminal trespass.

See note to s. 277, *ante* p. 222.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

Punishment for house-trespass.

See as to the summary jurisdiction of the Magistrate of the district over this offence, Crim. P.C., s. 222.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commission of an offence punishable with death.

See Cr. P.C., s. 89, *ante* p. 106.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commission of an offence punishable with transportation for life.

See Cr. P.C., s. 89, *ante* p. 106.

House-trespass in order to the commission of an offence punishable with imprisonment.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass after preparation made for causing hurt to any person.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

See note to s. 443, *ante* p. 358.

Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

See *ante* p. 358.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Lurking house-trespass or house-breaking after preparation made for causing hurt to any person.

456. Whoever commits lurking house-trespass by night or house-breaking by night shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Punishment for lurking house-trespass of house-breaking by night.

See as to this section and ss. 457-460, Cr. P.C., s. 89, *ante* p. 106, and note to s. 443, *ante* p. 358.

457. Whoever commits lurking house-trespass by night or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Lurking house-trespass or house-breaking by night, in order to the commission of an offence punishable with imprisonment.

See note to s. 456.

458. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restrain-

Lurking house-trespass or house-breaking by night, after preparation made for causing

hurt to any person.

ing any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

See note to s. 456.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

See note to s. 456.

All persons jointly concerned in house-breaking, &c., to be punishable for death or grievous hurt caused by one of their number.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

See note to s. 456.

The liability under this section becomes absolute upon every person jointly concerned in the house-trespass or house-breaking, even though death or grievous hurt was neither the common object of the offenders, nor contemplated by them as likely to result. (11 B. L. R. 355.)

Dishonestly breaking open any

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains

closed receptacle containing or supposed to contain property.

or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

Forgery.

463. Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

A charge of an offence relating to documents described in ss. 463, 471, 475 or 476, of the Indian Penal Code, when the documents shall have been given in evidence in any proceedings in any Court, Civil or Criminal, shall not be entertained against a party to such proceedings except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate. Such sanction may be given at any time. (Cr. P.C., s. 469, and see ss. 470-477, *ante* p. 139, 169.

To constitute an indictable offence the act must be fraudulent and injurious. Writing a spurious invitation to dinner might be very culpable as a hoax, but would not be a fraud upon any one. It is not, however, required, in order to constitute in point of law an intent to defraud, that the person committing the offence should have had present in his mind an intention to defraud a particular person, if the consequences of the act would necessarily, or possibly, be to defraud any person; but there must, at all events, be a possibility of some person being defrauded by the forgery. (Per Cresswell, J., Reg. *v.* Marcus, 2 C. & K. 356.) Deceit is not necessarily fraud. There must be a possibility that some one should not only be deceived but injured. There must be an intention to cause wrongful gain or wrongful loss to some one. And therefore where A signed B's name to petitions presented by C to a Mamlatdar, requesting his summary assistance for the recovery of rent from B's tenants, this was held not to be forgery. (11 Bomb. H.C. 3.) And so the falsification of office records, made in order to conceal previous acts of fraud or negligence, were held not to amount to forgery, as no one would be defrauded or injured by them. (2 N.W.P. 11; 6 N.W.P. 56.)

Where the false document was intended to defraud a society, it was held that the objection that the prisoner could not be convicted of forgery with intent to defraud, because he was one of the persons jointly interested with others in the funds, was not sustainable. (Reg. *v.* Moody, 31 L.J.M.C. 156; L. & C. 173.)

Where several persons forged different parts of an instrument all are guilty as principals. And so it is where several concur in employing another to make a forged instrument, knowing its nature. (Arch. 86.)

Making a false document.

464. A person is said to make a false document,

First.—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by or by the authority of a person, by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or

If the document is false in fact and has been dishonestly or fraudulently made by the accused, with the intention of serving any of the purposes stated in s. 463, the offence will be complete, though no

use whatever has been made of it or even attempted to be made. (2 Russ. 709; Pro. Mad. H.C., 7th April, 1866; and see s. 474.) And although the writing is not legal evidence of the matter expressed, still it will be a document under s. 29 if the parties framing it believed it to be and intended it to be used as evidence of such matter. (2 B.A. Cr. 12.)

Entries by a prisoner containing a false statement that a person was alive, for the purpose of enabling a pension to be drawn by a dead man, may be evidence of intention to cheat or commit criminal misappropriation, but do not amount to forgery. (Cr. R.A. 12, 1870; Scotland, C.J. and Collett, J., Feb. 21, 1870.)

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or,

"Not only the fabrication and false making of the whole of a written instrument, but a fraudulent insertion, alteration, erasure, even of a letter, in any material part of a true instrument, whereby a new operation is given to it, will amount to forgery ; and this, although it be afterwards executed by another person ignorant of the deceit. (2 Russ. 319.) And individuals falsifying their own book of accounts, and producing them in evidence before a Court of Justice, were held by the Bombay F.U. to have committed forgery." (3 M. Dig. 122, § 138.)

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that, by reason of deception practised upon him, he does not know the contents of the document, or the nature of the alteration.

Illustrations.

(*a*) A has a letter of credit upon B for Rupees 10,000, written by Z. A, in order to defraud B, adds a cypher to the 10,000, and makes the sum 100,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase money. A has committed forgery.

(*c*) A picks up a cheque on a Banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A

fraudulently fills up the cheque by inserting the sum of ten thousand Rupees. A commits forgery.

(*d*) A leaves with B, his agent, a cheque on a Banker signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand Rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand Rupees. B commits forgery.

(*e*) A draws a Bill of Exchange on himself in the name of B without B's authority, intending to discount it has a genuine Bill with a Banker, and intending to take up the Bill on its maturity. Here, as A draws the Bill with intent to deceive the Banker by leading him to suppose that he had the security of B and thereby to discount the Bill. A is guilty of forgery.

(*f*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g*) A endorses a Government Promissory note and makes it payable to Z, or his order, by writing on the Bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery. (1 R.C.C. Civ. 95.)

(*i*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions induces Z to sign the will. A has committed forgery.

(*j*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortunes, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property A has committed forgery.

(*k*) A, without B's authority, writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a*) A signs his own name to a Bill of Exchange, intending that it may be believed that the bill is drawn by another person of the same name. A has committed forgery.

(*b*) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a Bill of Exchange drawn by B upon Z, and negotiate the Bill as though it had been accepted by Z. A is guilty of forgery; and if B knowing the fact draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*) A picks up a Bill of Exchange payable to the order of a different person of the same name. A endorses the Bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(*d*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery, by antedating it.

(*e*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit and with intent to defraud his creditors, and in order to give a colour to the transaction writes a Promissory Note binding himself to pay to B a sum for value received and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his life-time, may amount to forgery.

Illustration.

A draws a Bill of Exchange upon a fictitious person, and fraudulently accepts the Bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for forgery.

Whoever shall be a second time convicted of forgery, as defined in ss. 463, 466, 467, 468, or 469, may be punished with whipping in addition to the penalties of the Penal Code. (Act VI of 1864, s. 4.)

Forgery of a record of a Court of Justice, or of a public Register of Births, &c.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a Register of Birth, Baptism, Marriage, or Burial, or a Register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See note to s. 465.

Forgery of a valuable security or will.

467. Whoever forges a document which purports to be a valuable security, or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

See note to s. 465.

The concoction of a document which upon its face appears to be a mere copy, and which if a genuine copy would not authorize the delivery of money or the doing of any other act referred to in this section, is not chargeable as an offence under s. 467. (5 Bomb. C.C.

56.) Of course, if the document purported to bear the signature of any public officer, authenticating it as a true copy, the forgery of his signature might be an offence under s. 465.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery for the purpose of cheating.

See note to s. 465.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Forgery for the purpose of harming the reputation of any person.

See note to s. 465.

470. A false document made wholly or in part by forgery is designated "a forged document."

A forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Using as genuine a forged document.

See Cr. P.C., s. 469, *ante* p. 366.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under Section 467, or with

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable under Section 467.

such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable otherwise.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than Section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of a valuable security or will, known to be forged, with intent to use it as genuine.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in Section 466, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and, if the document is one of the description mentioned in Section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The intention to make a fraudulent use of the forged document is an essential element in this offence. This intention can seldom be directly proved. Where the forged document is capable of being fraudulently used, and is found in the possession of a person who is interested in making a fraudulent use of it, I conceive that a con-

viction would be warranted, unless the defendant accounted for his possession of the instrument. Suppose, for instance, that a forged release were to be found in the possession of a debtor, or a forged will or conveyance in the possession of a claimant to an estate, this would be sufficient to throw upon him the burthen of showing that he came innocently by the document. But, where he accounts for his possession of the instrument in a manner which is equally consistent with his knowledge or ignorance of its fraudulent character, there the presumption of innocence will arise again. For instance, the mere fact that the purchaser of an estate is in possession of title deeds, some of which are shown to be forgeries, would be no evidence whatever of his guilt; for, in the absence of evidence as to their origin, the natural inference is that they were handed to him by the vendor as constituting the title, and, if so, the proper presumption would be that he took them innocently. (See Mad. S.U. Dec., p. 62, of 1859.)

As to what constitutes possession, see *ante* p. 203.

Counterfeiting a device or mark used for authenticating document described in Section 467, or possessing counterfeit marked material.

475. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in Section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See Cr. P.C., s. 469, *ante* p. 366.

Counterfeiting a device or mark used for authenticating documents other than those described in Section 467, or possessing counterfeit marked material.

476. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document other than the documents described in Section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any

document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See Cr. P.C. s. 469, *ante* p. 366.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete, any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulent cancellation, destruction, &c., of a will.

The words "purports to be" bring this section within the English decisions which lay down that a document which is unstamped, and therefore not admissible as evidence, may still be a valuable security. (7 Mad. H.C. Rul. 26.)

OF TRADE AND PROPERTY-MARKS.

478. A mark used for denoting that goods have been made or manufactured by a particular person, or at a particular time or place, or that they are of a particular quality, is called a trade-mark.

Trade-mark.

479. A mark used for denoting that moveable property belongs to a particular person, is called a property-mark.

Property-mark.

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they were made or manufactured at any time or place at which they were not made or manufactured, or that they are of a particular quality of which they are not, is said to use a false trade-mark.

Using a false trade-mark.

To constitute an offence under this section it is only necessary to show an intention to produce a false belief as to the origin of an article, and the use of some external indication to produce that belief. Where an existing trade-mark is imitated, it is not necessary that the resemblance should be such as would deceive persons who should see the two marks placed side by side. In a recent case in England the Chancellor, Lord Cranworth said,

"If a purchaser looking at the article offered to him would naturally be led, from the mark impressed upon it, to suppose it to be the production of the rival manufacturer, and would purchase it in that belief, the Court considers the use of such a mark to be fraudulent. But I go further. I do not consider the actual physical resemblance of the two marks to be the sole question for consideration. If the goods of a manufacturer have, from the mark or device he has used, become known in the market by a particular name, I think that the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market may be as much a violation of the rights of that rival as the actual copy of his device." (Seixo *v.* Provezende, 1 L.R. Ch. 196; Wotherspoon *v.* Currie, 5 L.R.H.L. 508.)

Accordingly, in that case where the plaintiff had been in the habit of stamping his casks with a coronet and the word 'Seixo,' whence his wines acquired the name of 'Crown Seixo Wine,' an injunction was issued against the use by the defendant of a coronet with the words "Seixo de Cima."

But an injunction will issue where an indictment could not be maintained under this section, since it is necessary not only to shew that the mark would produce a false belief, but that it was used with that intention.

The intention to cause a false belief will always be inferred, where the mark is in itself a false statement, and is affixed under circumstances which would naturally lead to belief of that statement. If a shopkeeper, named Smith, were to impress the brand of "Rodgers, Sheffield," upon an iron knife from Birmingham, no further evidence would be necessary to show that he meant to create a false impression as to its maker and origin. This is peculiarly one of those cases in

which the act itself being *primâ facie* improper, the burthen of proving that it was done under circumstances which might make it innocent would lie upon the defendant. (See *ante* pp. 77, 136.)

It would be otherwise where the mark, though similar to that used by other tradesmen, contained no false statement, and might have been accidentally and innocently adopted.

This section does not include false statements as to quantity. Therefore, the fraud which was exposed some time ago of marking reels of cotton as if they contained 300 yards, when they really only contained 250, would pass unpunished. If, however, such reels were sold to any person as containing the quantity marked upon them, this would be the offence of cheating under s. 415.

Using a false property-mark.

481. Whoever marks any moveable property, or goods, or any case, package, or other receptacle, containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Punishment for using a false trade or property-mark with intent to deceive or injure any person.

482. Whoever uses any false trade-mark or any false property-mark with intent to deceive or injure any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The deception referred to in this section must, I suppose, be such a deceit as amounts to a fraud or breach of legal obligation. Otherwise, a host who wished to combine ostentation with economy, by giving his guests gooseberry out of bottles with a champagne label, might be indicted for the trick. If, however, the landlord of a hotel, who is paid for his wine on its supposed quality, were to do the same, there would be a legal fraud, which would be criminal under s. 482.

It will not be necessary to show an intention to deceive or injure any particular person, if such deceit or injury would be the natural consequence of the use of the false marks under the circumstances in question. Nor would it be necessary to show that any one was, in point of fact, deceived. Indeed, in general where the deceit had been carried into effect against any person, the more serious offence of cheating would have been committed.

483. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any trade or property-mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.

484. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the same is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of making or counterfeiting any public or private property or trade-mark, with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade-mark, with intent that the same shall be used for the purpose of denoting that any goods or merchandize were made or manufactured by any particular person or firm by whom they were not made, or at a time or place at which they were not made, or that they are of a par-

Fraudulent making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.

ticular quality of which they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

486. Whoever sells any goods with a counterfeit property or trade-mark, whether public or private, affixed to or impressed upon the same, or upon any case, wrapper, or receptacle in which such goods are packed or contained, knowing that such mark is forged or counterfeit, or that the same has been affixed to or impressed upon any goods or merchandize not manufactured or made by the person or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure, or damage any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Knowingly selling goods marked with a counterfeit property or trade-mark.

487. Whoever fraudulently makes any false mark upon any package or receptacle containing goods, with intent to cause any public servant or any other person to believe that such package or receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Fraudulent making a false mark upon any package or receptacle containing goods.

488. Whoever fraudulently makes use of any such false mark with the intent last aforesaid, knowing such mark to be

Punishment for making use of any such false mark.

false, shall be punished in the manner mentioned in the last preceding section.

Defacing any property-mark with intent to cause injury.

489. Whoever removes, destroys, or defaces any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Breach of contract of service during a voyage or journey.

490. Whoever being bound by lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred Rupees, or with both.

Illustrations.

(*a*) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*b*) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(*c*) A, proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(*d*) A, by unlawful means, compels B, a cooly, to carry his baggage. B, in the course of the journey, puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

It has been held by the High Court of Bengal that the words "during a voyage or journey" govern the whole of this section, and, therefore, that breach of a contract to carry indigo from the field to the vats is not punishable under s. 490. (2 R.C.C.C.R. 63, and see 5 Ibid. 29.)

"This section does not apply to servants hired by the month, and under a continuing implied contract to serve until the engagement is terminated by a month's notice." (Rulings of the Madras High Court, 27th March, 1863; 7th Jan. 1868.)

The first question under this and the two succeeding sections will be, whether the contract was one by which the defendant was legally bound. Putting cases of compulsion aside, the only doubt which is likely to arise upon this point is where the undertaking has been gratuitous. The law upon this point is long settled, viz., that a party who engages gratuitously to perform a service cannot be compelled to undertake it at all. But, if he do enter upon the performance of the task he is bound to complete it. Since a new consideration arises from the very fact that, by undertaking the duty, he has induced the other to rely upon his performance of it and to entrust him with its discharge. (2 Sm. L.C. 193.)

In a recent case, an action was brought against the stewards of a race course, whose services where unpaid, for negligence in performing them. Jervis, C.J., in giving judgment said,

"The rule is well laid down in Smith's Mercantile Law, p. 112, where it is said, that there is a difference between the principal's rights against a remunerated and against an unremunerated agent. The former, having once engaged, may be compelled to proceed to the task which he has undertaken; the latter cannot, for his promise to do so being induced by no consideration, the rule *ex nudo pacto non oritur actio* applies. But, if he do commence his task, and afterwards be guilty of misconduct in performing it, he will, though unremunerated, be liable for the damage so occasioned, since, by entering upon the business, he has prevented the employment of some better qualified person. This passage applies to principal and agent, but the reasoning is applicable here." (Balfe *v.* West, 22 L.J.C.P. 175; 13 C.B. 466.)

The only grounds upon which an excuse is admitted under the section are in the case of illness or ill-treatment, though in s. 492 a further exception is introduced in favour of any other "reasonable excuse." A servant would, therefore, be liable, who ran away on a journey at the approach of a tiger, or who refused to go on board a ship in a hurricane, or to travel through a district where cholera was raging.

A refusal to pay wages actually due would not come under this head of ill-treatment, but would operate as a severance of the

contract. But no refusal to give an advance would justify a servant in breaking off his engagement, unless such advance formed part of the contract.

The word "voluntarily" (see s. 39, *ante* p. 25) will protect the servant in cases where he has been prevented carrying out his engagement by accident, fraud, mistake, or superior force. It will be necessary to show that he broke his engagement, intending to do so at the time. (Rider *v.* Wood, 29 L.J.M.C. 1. See 1 L.R.Q.B. 424.)

A different question would arise where the evidence showed that the defendant had voluntarily left his service, but under a *bonâ fide* belief that he was justified in doing so. In some recent cases upon somewhat similar Statutes in England, it had been suggested that a *bonâ fide* and reasonable belief that the party was justified in his act was an answer to the criminal charge. (Ashmore *v.* Horton, 29 L.J.M.C. 13; Willett *v.* Boote, 30 Ibid. 6; Youle *v.* Mappin, Ibid. 234.) But, in a later case upon the point, where the question directly arose, this doctrine seems to have been over-ruled. There the defendant had been apprenticed. His master died, and the trade was carried on by the widow and executrix. The apprentice was advised by an attorney that the death terminated the apprenticeship. The Justices were of opinion that it did not, and convicted him for absenting himself without lawful cause. On appeal, the conviction was affirmed. Martin, B. said,

"This has been treated as entirely a criminal proceeding. I doubt very much whether that is its true character. It seems to me nothing more than a provision by the legislature for the purpose of enforcing certain civil rights. The legislature may have reasonably taken into consideration instances of persons against whom it would be idle to bring an action. The legislature may very reasonably and truly have said, this is entirely a civil case, but it is not a contract to be enforced in the ordinary way by a civil action. We, therefore, will take a more summary way of doing it, and will treat this civil contract as a matter punishable, not strictly criminally, but as a way of enforcing the performance of the contract. The question is, is it any answer to his wilfully and deliberately acting contrary to that which the law by his own contract imposed upon him, that he was advised by a person to do so and so? It seems to me that would be contrary to common sense. If a person wilfully, knowingly, and designedly does that which is done in this case, he must take the consequences; and one consequence is, that by Act of Parliament Justices have jurisdiction to punish him in a sense, that is, in the sense, it appears to me, to compel him to perform his contract." (Cooper *v.* Simmons, 31 L.J.M.C. 138, 144.)

In the section now under consideration and in s. 491 the offence consists simply in the "voluntary omission" to do that which the defendant has contracted to do, and, therefore, the above observations seem to be exactly in point. Under s. 492 the words "without reasonable cause" are introduced, and, therefore, in indictments under that section the argument may still prevail that the party had reasonable cause to believe that his service had come to an end, or that he was justified in quitting it.

Where the contract of service is a continuing one, the servant may be punished from time to time for refusing to serve under it. The contract is not terminated by indictment and punishment. (Unwin *v.* Clarke, 1 L.R.Q.B. 417; Cutler *v.* Turner, 9 Ibid. 502. The contrary, however, appears to have been ruled in Bengal. (2 R.J. & P. 24.)

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a Dâk Company to drive his carriage for a month. B employs the Dâk Company to convey him on a journey, and during the month the Company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

Breach of contract to attend on and supply the wants of helpless persons.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred Rupees, or with both.

This section is still more remarkable than the preceding, as it contains no exception whatever, not even illness or ill-treatment. The latter may, perhaps, have been designedly omitted, lest a bearer might plead as an excuse for abandoning his infant charge that the latter had boxed his ears or kicked his shins. But why is illness not allowed? It may be suggested, that a person does not voluntarily omit that which he omits in consequence of illness. But, if so, why was the term introduced into s. 490?

Breach of a contract to serve at a distant place to which the servant is conveyed at the master's expense.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India, to which, by virtue of the contract, he has been or is to be conveyed at the expense of such

other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him or neglected to perform the contract on his part.

This section only applies to cases where the service is to be performed at some place different from that in which the defendant resided at the time the contract was made. Further, it only applies to cases of written contracts, and, therefore, the party can only be charged for breach of something contained in the writing. Oral evidence will be admissible to explain the meaning or to identify the object of the contract, but not to add to or vary its terms. (1 Sm. L.C. 282.)

It will be observed that by this section it is required that the *contract*, not merely the particular thing which the defendant promised to do, should be in writing, otherwise no prosecution can be instituted for its breach. Similarly, the English Statute of Frauds provides that in case of certain contracts no action should be allowed "unless the agreement upon which such action should be brought, or some note or memorandum thereof, shall be in writing." Upon this Statute it has been long ruled that "the term *agreement* comprehends contracting parties, a consideration, and a promise; all these must, therefore, appear in the writing." (Smith Merc. L. 469.) As Mr. Justice Grose said, in the leading case upon the subject (Wain *v.* Warlters, 5 East, 19),

"What is required to be in writing is the agreement, not the promise. Now the agreement is that which is to show what each party is to do or perform, and by which both parties are to be bound, and this is required to be in writing. If it were only necessary to show what one of them was to do, it would be sufficient to state the promise made by the defendant who was to be charged with it. But if we were to adopt this construction it would be the means of letting in those very frauds and perjuries which it was the object of the Statute to prevent; for, without the parol evidence, the defendant cannot be charged upon the written contract for want of a consideration in law to support it."

In the present Code the word used is *contract*, not *agreement*. But the meaning of the words is identical, and the policy of both sections is obviously the same. The object of requiring the contract to be in writing is to put its terms beyond dispute, and to enable the Court to be certain whether it has been broken or not. If the names of the contracting parties were omitted it might be that the defendant had never been bound at all, or that he had been bound to a different person and had fulfilled his engagement with him. (See Sale *v.* Lambert, 18 L.R. Eq. 1; Potter *v.* Duffield, Ibid. 4. Thomas *v.*

Brown. 1 Q.B.D. 714; Williams *v.* Jordan, 6 ch. D. 517.) So, if the nature of the employment or the place at which it was to be performed were left out, it might be that the workman was willing to do all that he had agreed to do, but that his employer was trying to force him to do something different. But it is by no means so clear that the consideration can be said to form part of what the workman had contracted to do. It represents what the other party has contracted to do in return for his services. It may be that without proof of consideration the written contract could not be enforced. But if the consideration existed, the contract would not be void for want of stating what it was. Accordingly, the inconveniences of setting out the consideration in gurantees under English law was found so great, that it has been expressly enacted that such statement should not be necessary. (19 & 20 Vict. c. 97, s. 3.) It certainly would be most advisable that contracts for labour should set out both sides of the agreement, so that the Court might see whether the employer had done what was incumbent on him. But it can scarcely be said that a person would not be "bound by lawful contract in writing to work for another person," though the writing did not set out the wages which he was to receive.

The contract must be in writing, but not necessarily in one writing.

"Provided the agreement be reduced to writing it matters not out of how many different papers it is to be collected, so long as they can be sufficiently connected in sense. But this connection in sense must appear upon the documents themselves, for parol evidence is not admissible for the purpose of connecting them." (1 Sm. L.C. 283.)

Therefore, if one letter contained an offer of a particular service on particular terms, and this offer were accepted by a letter which referred to the previous one, either expressly or by necessary reference, this would constitute a sufficient contract in writing. (Crane *v.* Powell, 4 L.R.C.P. 123.) But it would be otherwise if the second document merely said, "I will accept your offer," without anything to show what offer was meant.

The section speaks of the party "being bound by lawful contract in writing," which shows that the contract itself must have been a written one. In this respect it differs from the statute of Frauds, which was equally satisfied whether the agreement, or only a note or memorandum thereof, was in writing. Under the English Statute the writing is only necessary to evidence the contract, not to constitute it. (1 Sm. L.C. 284.) Under this section the writing seems itself to be the contract. Hence, it seems doubtful whether the English decisions which rule that the Statute of Frauds is satisfied by any offer in writing, made by the party to be charged, followed by a verbal acceptance by the other party, will apply to s. 422. (Reuss *v.* Picksley, 1 L.R. Ex. 342.) Such a written proposal is a note or memorandum of an agreement, but can hardly be said to be a contract in writing, since it wants the acceptance which is necessary to turn it into a contract. In no case would a written offer by the employer, followed by a verbal acceptance by the servant, be sufficient. (Felthouse *v.* Bindley, 31 L.J.C.P. 204; 11 C.B.N.S. 869.)

Nothing is said of a signature. But as the defendant is to be "lawfully bound by a contract in writing," I conceive that the writ-

ing must contain something which, independently of oral evidence, will show that he had actually become bound, as, for instance, his signature or mark. But where a contract began in the defendant's own handwriting, "I, A. B, agree, &c.," this was held to be a sufficient signature, even under the Statute of Frauds which requires one, although a blank had been left at the bottom of the memorandum. (Knight *v.* Crockford, 1 Esp. 190.) But if from the form of the document it should appear that a future signature had been contemplated, but never appended, as, for instance, where the instrument ended "as witness our hands," the mere insertion of the defendant's name in the body of the document, even in his own handwriting, would not be a sufficient proof that he had become finally bound, unless there were some subsequent recognition of it as complete. Still less, where such an instrument was not in the defendant's writing at all. (Hubert *v.* Treherne, 3 M. & G. 734, 753.) Where the acceptance of an offer was by telegram, and the instructions to the telegraph clerk were signed by the defendant, but the message itself only contained his name written at the bottom as the sender of it, it was held that there was a sufficient signature to satisfy the Statute of Frauds. (Godwin *v.* Francis, 5 L.R.C.P. 295.) It would certainly be sufficient under this section.

Although the names of both parties must appear in the contract, it is only necessary that the party against whom it is enforced should have signed it, or should appear to be bound thereby. For the object of the section is to protect the person against whom it is enforced, and where he has signed it, he cannot be subject to any fraud even though the other party has not signed it. (1 Sm. L.C. 285.)

The Bengal High Court has held that a labourer cannot be punished twice for breach of the same contract. (2 R.J. & P. 24.) I presume this applies to cases where both parties have rescinded the contract. But where, after punishment, he chose to return and resume service under the same contract, I can see no reason why he should not be again punished for a second breach. Nor can I see why he should be allowed to rescind the contract, if his employer insists upon it as a continuing one. It has been expressly ruled in England that a labourer who has been punished for breach of contract may be indicted again, if he refuse to carry it out at the expiration of his imprisonment. (Unwin *v.* Clarke, 1 L.R.Q.B. 417; Cutler *v.* Turner, 9 Ibid. 502.)

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to

Cohabitation caused by a man

deceitfully inducing a belief of lawful marriage.

him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marrying again during the lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See as to this and the following Section Act III of 1872, ss. 15, 16.

Exception.—The section does not extend to any person, whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

The first requisite under this section is to show that there was a valid subsisting marriage at the time of the second marriage. The law relating to marriages of persons, one or both of whom are Christians and which are celebrated in India, is regulated by Act V of 1865, and by Stat. 14 & 15 Vict. c. 40, and Act V of 1852. See, also, 58 Geo. III, c. 84, modified by Act XXIV of 1860, and 28 & 29 Vict. c. 64. Parsee marriages are regulated by Act XV of 1865, and the re-marriages of Hindu Converts by Act XXI of 1866. Act III of 1872 provides for persons who do not profess the Christian, Jewish, Hindu, Mahometan, Parsi, Buddhist, Sikh, or Jain religions. As regards marriages celebrated out of India, any form of marriage which is proved to be valid by the law of the country where it took place is valid all over the world. (See Armitage *v.* Armitage, 3 L.R. Eq. 343.)

For instance, where it appeared that the parties had lived together for five years in Virginia and had been received in society as man and wife, and that by the law in force in Virginia at the time the cohabitation began no religious ceremony was necessary to the validity of a marriage, nor was any registry of marriages required to be kept, it was held that this constituted sufficient evidence of a marriage. (Rooker *v.* Rooker, 33 L.J. Mat. 42; Limerick *v.* Limerick, 32 Ibid. 92; Patrickson *v.* Patrickson, 1 L.R.P. & D. 85.) And marriage may be established by preponderating repute and conduct, even though the repute is divided. (Lyle *v.* Ellwood, 19 L.R. Eq. 98.) And every fair presumption will be made in favor of the legality of the marriage where both the parties have *bonâ fide* believed themselves to be married. Therefore, where it was proved that a marriage followed by cohabitation had taken place in a Roman Catholic Chapel, the Court held that it must be presumed that the Chapel was registered, and that the Registrar was present as required by Stat. 6 & 7 Will. IV, c. 85. (Sichel *v.* Lambert, 33 L.J.P. 137; Reg. *v.* Cresswell, 1 Q.B.D. 446.)

"But while the forms of entering into the contract of marriage are to be regulated by the law of the country in which it is celebrated, the essentials of the contract depend upon the law of the country in which the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated." (Per Lord Campbell, C. Brook *v.* Brook, 7 Jur. N.S. 422.) Accordingly, where a man married the sister of his deceased wife in Denmark, where such marriages are valid, the marriage was declared to be void in England, both parties being domiciled English subjects, and a marriage of that sort being absolutely forbidden by English Law. (Brook *v.* Brook, *ub. sup.*) And conversely, a marriage celebrated in England between two domiciled Natives of Portugal was declared invalid, on the ground that being first cousins they were prohibited by the law of Portugal from marrying without a Papal dispensation, though in England the relationship was no bar. (Sottomayor *v.* DeBarros, 2 P.D. 1). And in the case of any Christian an incestuous or polygamous marriage would be a nullity, wherever celebrated. (Story Confl. L. § 113*a*-114.)

The Statute 5 & 6 Will. IV, c. 54, which declares marriages with the sister of a deceased wife to be absolutely void in England, has been ruled not to extend to India, even within the Presidency towns. (2 Hyde, 65.) But such marriages are by the law of England voidable during the life of the parties, even independently of the Statute. (Reg. *v.* Chadwick, 11 Q.B. 173.) As regards persons, then, who have an English domicile, the Statute forms part of that personal law which they carry about with them wherever they go. (Brook *v.* Brook, *ub. sup.*) And the same rule seems to apply even in the case of Native Christians married under Act V of 1865, since the "legal impediments" referred to in that Act appear to be legal impediments under the English law. (See ss. 17, 19 & 48, clause 2.) So, also, in a marriage before a Registrar under 14 & 15 Vict. c. 40, the certificate is not to issue if any "lawful impediments according to the law of England be shown." (s. 2.) But as regards East Indians or others to whom the above Acts do not apply, the marriage is good till set aside, and cannot be questioned after the death of either of the parties to it. (11 Q.B. 235.)

Section 494 only applies to those classes of persons to whom polygamy is forbidden, as, otherwise, the second marriage would not be void by reason of the continuance of the first. Therefore, a Hindu or Mahometan man would not come under its provisions, but a Hindu or Mahometan female would, since their law admits a plurality of wives, but not of husbands. (2 R.C.C.C.R. 48; Mad. H.C. Rul., 28th June, 1870.) With some of the Hill tribes, for instance the Todas on the Neilgherries, the case is just the opposite, each woman being the wife of all the brothers of the family.

Where in the Bombay Presidency a custom was set up in the Talapda Koli caste that a woman might leave her husband without his consent and contract a valid marriage with another man, the High Court held that such a custom, even if proved to exist, was invalid, as being entirely opposed to the spirit of the Hiudu law; that the second marriage was, therefore, invalid, and that the man who contracted it was punishable under s. 497. (2 Bomb. H.C. 124. See too 10 Ibid. 381.) But in that case it was found as a fact that the prisoner did not believe that the woman had ceased to be the wife of her former husband, (5 Bomb. H.C.C.C. 18.) In another case, a custom was set up by virtue of which a man might marry a woman already married to another man, by paying a sum of Rupees 105 to the caste; this, also, was pronounced by the Bombay High Court to be void for immorality. (7 Bomb. A.C. 133.) And in a still later case where the caste had met and authorized the second marriage of a woman, whose first husband was still alive but a leper, the Court held that this was no defence to an indictment, though it was found as a fact that both parties *boná fide* believed that the second marriage was legal (1 Bomb. L.R. 347.) In a Madras case, where a custom was set up as existing in Southern India, that a woman might divorce her husband for cause shown, such as impotence, drunkenness, or misconduct, and then marry again, the High Court confined itself to saying that the custom had not been made out. (Carasoo Nachiar *v.* Government O.S. 62 of 1866.) An agreement made between natives of Assam, that a marriage which was about to take place should become void in certain events which where named, was held to be invalid, as contrary to the spirit of Hindu law and opposed to public policy. (11 B.L.R. 129.)

The following case occurred lately in Madras. A Christian convert married a wife according to the rites of the Christian religion. He then relapsed into Hinduism and married a second wife, a heathen, according to Hindu usages, his first wife being still alive. The Sessions Judge convicted him under s. 494, but the conviction was quashed on appeal by the High Court. (3 Mad. H.C. Appx. 7; 4 Ibid. 3.) The Court said that it was evident that if the prisoner had really come under Hindu law, then his second marriage was not void by reason of the former having taken place, since the Hindu law permits of polygamy. If, however, he still continued under Christian law, then his marriage according to Hindu ceremonial was a mere nullity, and the second marriage was void from its inherent invalidity, and not by reason of the continuance of the former marriage. But in the converse case of a person already married becoming a Christian and then marrying again, the criminality of the act would depend upon his previous religion. If he

had been a Mahometan his apostacy would dissolve the marriage union, and, therefore, the second marriage would be valid. (Baillie Dig. 203.) But if he had been an Hindu, he could only re-marry lawfully, after complying with the requisitions of Act XXI of 1866.

Under the corresponding English Statute (24 & 25 Vict. c. 100, s. 57), it has been held that the offence is committed even though the second marriage is in itself void, independently of the fact of its being bigamous. There, the second marriage was invalid, as being within the prohibited degrees of affinity, and it was contended on the authority of an Irish decision (Reg. *v.* Fanning) that the conviction was, therefore, wrong. This contention was overruled. Cockburn, C.J. said,

"In thus holding it is not at all necessary to say that forms of marriage unknown to the law, as was the case in Burt *v.* Burt, (2 S.W. & T. 88; 29 L.J. P.M. & A. 133, *a case of a Scotch marriage celebrated in Australia, no evidence being given that such marriages were recognized by local law,*) would suffice to bring a case within the operation of the Statute. We must not be understood to mean that every fantastic form of marriage to which parties might think proper to resort, or that a marriage ceremony performed by an unauthorized person, or in an unauthorized place, would be a marrying within the meaning of the 57th section of 24 & 25 Vict. c. 100. It will be time enough to deal with a case of this description when it arises. It is sufficient for the present purpose to hold, as we do, that where a person already bound by an existing marriage goes through a form of marriage, known to and recognized by the law as capable of producing a valid marriage, for the purpose of a pretended and fictitious marriage, the case is not the less within the Statute by reason of any special circumstances, which, independently of the bigamous character of the marriage, may constitute a legal disability in the particular parties, or make the form of marriage resorted to specially inapplicable to their individual case." (Reg. *v.* Allen, 1 L.R.C.C. 367.)

The case of Reg. *v.* Fanning, thus formally over-ruled, was one where the second marriage, besides being bigamous, was void by Statute, as being celebrated by a Roman Catholic priest between a Protestant (who falsely represented himself to be a Roman Catholic) and a Roman Catholic woman. Suppose in India, where Hindu and Mahometan marriages are recognized by law, a Christian married a Hindu or Mahometan woman, according to the rites of the Hindu or Mahometan law, would such a marriage, if bigamous, be indictable under s. 494? According to Reg. *v.* Fanning it would not. According to Reg. *v.* Allen apparently it would, if the Christian represented himself to be, and might reasonably be supposed to be, a Hindu or Mahometan. Otherwise, the ceremonial would probably, even by the English Judges, be considered to be only "a fantastic form of marriage," or to be celebrated by a person who could not have been considered to be authorized to perform it.

It might also be suggested that the difference between the wording of s. 494, and of s. 57 of 24 & 25 Vict. c. 100, would lead to cases under it being governed by the decision in Reg. *v.* Fanning, even by those who agreed with the actual decision in Reg. *v.* Allen. The English Statute runs, "Whosoever, being married, shall marry any other person during the life of the former husband or wife, shall be guilty of felony." The Indian section punishes any one who, "having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife." It might be contended, as it was held in Fanning's

case, that the Indian Statute did not apply if the second marriage was void from reasons other than the fact of its taking place during the continuance of the first marriage. This view might be supposed to derive some countenance from the language of Holloway, J., in the latter part of his remarks in the case in 3 Mad. H.C. Appx. 7. My own opinion, offered, of course, with great diffidence, is, that the meaning and proper construction of both Statutes is the same, and that the phrase "void by reason of its taking place during the life of such husband or wife" is intended to mark the distinction between cases where polygamy is permitted by the law of India and cases where it is forbidden. I cannot think that it was intended to give a character of innocence to a bigamous marriage, merely because it violates two Statutes instead of one.

At least two cases have occurred in India where Englishmen, married to Englishwomen, have adopted Mahometanism as their religion, and then proceeded to divorce their English wives according to the rules of Mahometan law, and to marry Mahometan wives according to Mahometan ritual. The question arises as to the criminality of such an act. It seems to me clearly to come within s. 494. The case is not in any way affected by the Madras decision as to the relapsed Hindu convert already cited. By the law of England monogamy is an unalterable part of the status of every Englishman, and no change of religion or even of domicile can in the view of English law affect that status. (Story Confl. L. § 113*a*-114; Hyde *v.* Hyde, 1 L.R.P. & D. 130.) Consequently the fact of conversion to Mahometanism, however genuine and sincere, could not in the case of an Englishman carry with it the right to contract a polygamous union. Such a marriage would, in the language of s. 494, be absolutely void by reason of its taking place in the life of the former wife.

It will be observed that in Skinner *v.* Orde, (14 M.I.A. 309, 324) the High Court of Allahabad expressed doubts as to the legality of a second marriage by a Christian who had adopted Mahometanism, and the Judicial Committee said they were well warranted in entertaining such doubts. There, however, the husband was evidently not of English birth, and not subject to the incidents of an English status. His case therefore was very much weaker than that of the Englishman under consideration, and was in fact similar to that of the relapsed Hindu convert in Madras.

The first proviso in the exception does not, I presume, exclude cases where a valid divorce may be affected without any judicial proceeding. For instance, the Mahometan law permits a divorce to take place under various circumstances, none of which call for judicial interposition. (Macnaghten M.L. 59, 296.) Under Hindu law a woman may be divorced by her husband for adultery, and, in some of the lowest castes, the woman so divorced may marry again. (1 Stra. H.L. 52; 2 Mac. H.L. 126.) According to the early Hindu law it would appear that even adultery had not the effect of severing the marriage tie, but that the husband was still under the obligation of maintaining his wife, though only upon a sort of starvation allowance. (2 Coleb. Dig. 134-136.)

Act XXI of 1866 provides for the case of native converts from

Hinduism whose spouses remain heathens, and refuse on account of the change of religion to continue cohabitation.

As to divorce in the case of Parsees, see Act XV of 1865, ss. 27-43, and in the case of Christians, Act IV of 1869.

In cases not coming within the final proviso of the exception, all that is necessary to make out a *primâ facie* case is to prove the two marriages, and that the first wife or husband was living when the second marriage took place. Of course, it would be open to the defendant to show that through a mistake he supposed the first wife was dead. (See s. 79.) But in the case of a continual absence of seven years it has been held in England that the prosecution must make out affirmatively that the defendant knew of his wife's existence at some time during the seven years. (Reg. *v.* Curgerwen, 1 L.R. C.C. 1.) The same rule appears properly applicable to s. 494.

Where a period of less than seven years has elapsed between the date at which the first wife was last heard of and the second marriage, there is no presumption either that she was alive or that she was dead at the date of the second marriage. Her continued existence at that date is a fact which must be made out by the prosecution like any other essential fact. Accordingly, where the parties separated in 1843 and the wife married again in 1847, and the Judge directed the jury that as there were no circumstances leading to any reasonable inference that the first husband had died, he must, therefore, be presumed to have been living at the date of the second marriage; this direction was held to be erroneous, and the conviction was set aside. (Reg. *v.* Lumley, 1 L.R.C.C. 196; see Phené's Trusts, 5 L.R. Ch. 139.)

495. Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.

Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. Marriage ceremony gone through with fraudulent intent without lawful marriage.

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Adultery.

The High Court of Bengal has ruled that strict proof of the marriage must be given in cases under s. 497 beyond the evidence of the husband and wife, even where the fact of the marriage is not denied. (1 R.C.C.C.R. 3 Circ. 3.) But I doubt the existence of any rule of law to this effect, unless there is reason to suspect that there never was a marriage. Accordingly, in a more recent case, the Bengal High Court held that the circumstance that a man and woman were living together as man and wife was sufficient to raise the presumption that they were such, and threw upon the accused the burthen of showing that they were not in fact married. (8 B.L.R. Appx. 63.)

The belief of the defendant as to the woman being the wife of another is a question of fact. Where a husband brought a suit against his wife for restitution of conjugal rights and a decree was given in his favour, leaving her the option either to return to her husband or to pay him a sum of money, and she took the latter course after which the alleged adultery took place, it was held that the defendant might have believed the woman was free to marry, and, if so, had committed no offence. (5 Bomb. H.C.C.C. 17.)

In a recent case in Calcutta (Reg. *v.* Ward, 1862) a question was raised in the course of the trial as to the evidence necessary to establish sexual intercourse. It was contended that the same proof was required as in the case of rape, viz., of actual penetration. (*Ante* p. 298.) The point was reserved, but it became unnecessary to decide it. It is plain that the words in the explanation to s. 375 are limited to cases of rape, and also that the object of them was the same as in Statute 9, Geo. IV, c. 74, s. 66, viz., to do away with proof of emission which used formerly to be required; the object of the provision is to limit, not to extend, the evidence for the prosecution. I conceive the rule will be exactly the same as it is in the Divorce Court, where intercourse is inferred from acts of guilty familiarity or even from opportunities sought for and created by the parties under circumstances which leave no reasonable doubt of criminal intention. Of course, stronger evidence will be required under this Code than in the English Divorce Court, for the wife can be called as a witness against the adulterer under s. 497, whereas she cannot in a suit for dissolution of marriage. But her admissions or confessions out of Court will not be evidence against him. (Robinson *v.* Robinson, 29 L.J. Mat. 178.)

Another question arises as to the nature of the evidence which will amount to *consent or connivance* on the husband's part. In the case of Allen *v.* Allen (30 L.J. Mat. 2) the law upon this point was laid down as follows :

"To find a verdict of connivance you must be satisfied from the facts established in evidence that the husband so connived at the wife's adultery as to give a willing consent to it. Was he or was he not an accessary before the fact? Mere negligence, mere inattention, mere dulness of apprehension, mere indifference will not suffice ; there must be an intention on his part that she should commit adultery. If such a state of things existed as would, in the apprehension of reasonable men, result in the wife's adultery—whether that state of things was produced by the connivance of the husband, or independent of it—and if the husband, intending that the result of adultery should take place, did not interfere when he might have done so to protect his own honour, he was guilty of connivance."

This ruling was almost literally followed by Sir Adam Bittleston in his charge to the jury, in Reg. *v.* Mohideen Lubbay, 3rd Madras Sessions, July 4, 1862. He ended by saying, "there must be a corrupt intention by acquiescence to assist in the commission of a crime."

But where the husband, after some angry discussion with his wife respecting the impropriety of her conduct, told her that she could not lead this life any longer, and that she must either give up her paramour or give him up, and that she could not live with him any longer if she continued her intimacy with the former, after which she deliberately left her husband, with full knowledge on his part that she was going to join the adulterer, and without his making any effort to prevent it, this was held not to amount to connivance. Sir C. Cresswell said,

"I cannot construe that into a willing consent that the adultery should be committed. It is an unwilling consent given because she would not comply with the condition that he insisted upon of giving up the improper intimacy. By connivance I understand the willing consent of the husband, that the husband gives a willing consent to the act, although he may not be an accessary before the fact ; that, although he does not take an active part towards procuring it done, he gives a willing consent and desires it to be done. What this man desired was, not that the act should not be done, but that she should not torment him by keeping up an intimacy of this character, and at the same time living with him as his wife, and that she should give up the one or other." (Marris *v.* Marris, 31 L.J. Mat. 69 ; Glennie *v.* Glennie, 32 Ibid. 17.)

The Penal Code merely uses the word consent, not willing consent, but I conceive that the above construction must be put upon the term. An unwilling consent is not a consent at all. It is simply a submission to what is unavoidable.

On the other hand, evidence of merely passive acquiescence in a state of adultery after full knowledge of it, and without taking any steps to procure redress, has been held to be evidence of consent amounting to connivance, so as to disentitle the acquiescing party to a divorce. (Boulting *v.* Boulting, 33 L.J. Mat. 33.) Because a divorce is only granted when the applicant is feeling and suffering under a sense of wrong, when the complaint is preferred. But it may be questioned whether under the Penal Code an *ex post facto* acquiescence can be used except as evidence of an acquiescence

previous to the act. If there was no consent or connivance up to the time the act was committed, then the offence is complete, and it is difficult to see how it can be obliterated by any subsequent consent.

This section is intended to protect the husband's rights, and, therefore, any consent or connivance which shows an abandonment by the husband of his claim to continence on the part of his wife will bar an indictment, even though the consent or connivance be to a different adultery from that which is specifically charged. Therefore, it is held that a consent to his wife's adultery with one man is a bar to proceedings in the Divorce Court against another man, or against the same man for a subsequent act of adultery. (Gipps *v.* Gipps, 32 L.J. Mat. 78; 33 Ibid. 161.) This rests on the presumption that an assent once given continues. But a case might occur where a sinful wife became reconciled to her husband and resumed a life of chastity, while he resumed his efforts to protect her virtue, and then, I conceive, the right to prosecute would revive.

Can a second prosecution be maintained against the same man for adultery with the same woman, she not having in the meantime returned to her husband's protection? The case actually arose in the 4th Sessions of 1864, Bombay, and Hore, J. directed the jury that the prosecution was maintainable, and that the former conviction was rather an aggravation of the offence. There, the woman had left her home before the first conviction, and lived in the prisoner's house the whole time he was undergoing his sentence, and the adultery complained of in the second prosecution was committed in that house as soon as the prisoner was released. With great respect for the learned Judge I conceive that no prosecution was maintainable. As Lord Chelmsford said in the case of Gipps *v.* Gipps, (33 L.J. Mat. 169),

"It must be borne in mind that the offence of adultery is complete in a single instance of guilty connection with a married woman. It is the first act which constitutes the crime, and though the adulterous intercourse between the parties should continue for years there is not a fresh adultery upon every repetition of the guilty acts, although all and each of them may furnish evidence of the adultery itself. The inference which I draw from this view of the subject is, that if a husband, having the right to divorce his wife for adultery, abandons that right in consideration of a sum of money received from the adulterer, he can never afterwards be a petitioner for a divorce on the ground of his wife's criminal intercourse with the same person."

It seems to be an equally legitimate inference that a husband who, having a right to institute a prosecution for adultery, does so and enforces the full penalty of the law against the offender, cannot punish him a second time for a renewal of intercourse which inflicts no fresh injury upon himself. Of course, it would be different if he had condoned the offence, and taken the wife back again into his society.

No charge of an offence under s. 497 shall be instituted except by the husband of the woman. (Cr. P.C., s. 478; Act XVIII of 1862, s. 44.) And on failure of proof that such is the case the indictment shall be quashed, and the person accused shall be discharged. (Ibid. s. 46.) But the death of the husband does not terminate a prosecution which has been once instituted by him. (4 Mad. H.C. Rul. 55.) As to withdrawal of the charge by the husband, see *ante* p. 189.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals, or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Enticing or taking away or detaining with a criminal intent a married woman.

The offence of *taking away* under this section is completed, though the woman goes voluntarily away with the man, and even though he goes with her by her solicitation.

"If, whilst the wife is living with her husband, a man knowingly goes away with her, in such a way as to deprive the husband of his control over her, for the purpose of illicit intercourse, that is a taking from the husband within the meaning of the section. The wife's complicity in the transaction is no more material on a charge under this section than it is on a charge of adultery." (Reg. *v.* Komarasawmy, 2 Mad. H.C. 331.)

"The word 'enticing' implies some blandishment or coaxing. Where the man and woman are perfectly agreed, the act of a third party who merely accompanies the woman from her husband's house amounts only to an abetment." (Rulings of Mad. H.C. for 1864 on s. 498. See also *ante* p. 293.)

In a more recent case, where the Madras High Court reversed the conviction, they said, (4 Mad. H.C. 20),

"The words of the section 'conceals or detains' may and were, we think, intended to be applied to the enticing and inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of his proper control over his wife for the purpose of illicit intercourse is the gist of the offence, just as it is of the offence of taking away a wife under the same section (vide 2 Mad. H.C. 331), and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments.

"Here, there is no reasonable evidence to show that the woman had not perfect freedom to leave the house, or that any allurement or persuasion was required or used to induce her to remain."

The taking away must be of a wife who is at the time living under the protection of her husband, or of some one acting on his behalf, though it is not necessary that she should be actually residing in the same house with such person. Therefore, a conviction was maintained when the prisoner had eloped with a wife from a house in Calcutta, hired for her by her husband, who was absent in Assam. The Court said,

"We cannot say as the Sessions Judge says, 'that a wife is always the property of her husband, whether he is absent or present;' but we think it quite

clear that a wife living in her husband's house, or in a house hired by him for her occupation and at his expense, is during his temporary absence living under his protection, so as to bring the case within the meaning of s. 498, provided, of course, that the defendant knew, or had reason to know, that she was the wife of the man from whose protection he took her, or on whose behalf the person from whom he took her had charge of her, and also provided that he took her with the intent specified in the Act. To hold otherwise would be to declare the worst cases of seduction not punishable under the Penal Code." (1 R.C.C. C.R. 45.)

The circumstance that the wife was being lodged or maintained at her husband's expense appears to me quite immaterial, if she was living at the time under her husband's control and protection, whether he were present or absent, and the defendant took her away from that control and protection. Suppose all the money belonged to the wife, this could make no difference in the crime of seduction.

Charges under this section are only to be instituted by the husband of the woman, or by the person having care of her on behalf of her husband. (Cr. P.C., s. 479; Act XVIII of 1862, s. 45. And see s. 46, *ante* p. 394.) As to the husband's power to withdraw the charge, see *ante* p. 189.

CHAPTER XXI.

OF DEFAMATION.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Defamation.

Giving a letter to be copied is a publication. (2 Hyde, 274.)

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

In order to bring within the term of this section defamatory matter relating to a deceased person, it will be necessary to show, not only that the deceased might have complained of it, but also that

it was written or spoken with the intention of insulting his surviving relations. I conceive that these words "intended to be hurtful, &c.," must be taken as meaning an express and primary intention, as distinguished from a legal and implied intention. It would be indictable to rake up the vices of a dead man for the sake of deliberately wounding his family, but no statements, however injurious, would be criminal, if made in the course of a *bonâ fide* history or biography, whose subject was dead. As Lord Kenyon, C.J. said, in the case of R. *v.* Topham, (4 T.R. 122),

"Now to say, in general, that the conduct of a dead person can at no time be canvassed; to hold that, even after ages are passed, the conduct of bad men cannot be contrasted with the good, would be to exclude the most useful part of history, and, therefore, it must be allowed that such publications may be made fairly and honestly. But, let this be done whenever it may, whether soon or late after the death of the party, if it be done with a malevolent purpose, to vilify the memory of the deceased, and with a view to injure his posterity, then it is done with a design to break the peace and then it is illegal."

It is to be observed that throughout this Chapter the offence of defamation depends upon the injury to the individual affected by the calumny, and not, as in the English law, upon any supposed tendency of the act to bring about a breach of the peace. (Report, 1837, p. 94.)

Explanation 2.—It may amount to defamation to make an imputation concerning a company, or an association, or collections of persons as such.

The point referred to in this explanation was much discussed in the Nil Durpan case in Calcutta, where one of the questions that was argued was, whether a libel upon the Indigo Planters was an indictable offence on account of the indefiniteness of the class libelled. According to English law, libels upon a body of men were indictable where they applied to the entire body, so that any individual of that body had a right to consider himself assailed, or where the tendency of the libel was to create a breach of the peace by exciting public indignation against a particular class. In the latter case, however, the offence consisted, not in the defamation of the individual, but in the seditious results which were likely to be brought about.

For instance, where the libel in its terms only referred to "An East India Director," and was charged as being a libel on the East India Company, the objection was taken that this was not a libel against all the Directors. The Court held that under the circumstances of the case it must be taken to be a reflection upon the whole body, and that this was a question of fact to be determined in the trial. As one of the Judges said,

"As it points out none in particular it must reflect upon all, and create a distrust of them in the public; and, therefore, I think the rule ought to be made absolute, *and it will be for the jury's consideration whether it reflects upon all the Company.*" (R. *v.* Jenour, 7 Mod. 400.)

The same principle was applied in the case of R. *v.* Williams, where the libel affected the entire body of Clergy in Durham. (5 B. & A. 595.) But where the libel clearly only related to some of a class and

there was nothing to show who the persons referred to were, it was held that even after verdict the conviction was bad. The Court said, "the writing must descend to particulars and individuals to make it a libel" (R. *v.* Orme, 3 Salk. 224; 1 Ld. Raym. 486), that is, as I understand the words, the writing must be capable of being applied to specific individuals, either as being expressly referred to or as being members of a class, the whole of which was stigmatised. (And see Le Fanu *v.* Malcolmson, 1 H.L. 637; Eastwood *v.* Holmes, 1 F. & F. 347.) This would seem to have been the ground of the decision in the Nil Durpan case. There, the pamphlet said, "I present the Indigo Planters' mirror to the Indigo Planters' hands. Now let every one of them, having observed his face, erase the freckle of the stain of selfishness from his forehead." Upon these words Sir B. Peacock is reported to have observed,

> "This certainly appears to me to represent to the Indigo Planters that if they look into this paper they would see a true representation each of himself. Is not this a reflection on a certain class? Each of them was to look at it to find his own picture."

And, again, the Chief Justice said,

> "It is unnecessary to decide in this case which of the Indigo Planters was alluded to in this publication, because every one of them is asked to look into the mirror. Any one of them could say—'I am one of the men alluded to, and I have thereby suffered damages which I wish to recover.' Then comes the question as to the class itself. Is this Court to be inundated with suits from each individual member of that class? Has not the class itself a right to be protected in a criminal prosecution, to obviate the necessity of each party suing separately? I therefore think the class has been sufficiently described." (Sup. Court, Calcutta, July 24, 1861.)

Where the particular individuals aimed at in the defamatory writing were not expressed and could not be ascertained, the publication of the writing was still indictable if it had a tendency to create sedition or disturbance. In one case the writing stated that a murder had been committed by several Jews who had recently arrived from Portugal, and who lived near Broad Street, in London. It was shown that in consequence of this libel several Jews who answered the description had been assaulted. Here, also, the objection was taken that no particular Jews were specified, and that the charge could not be taken as pointing to any definite class. The Court said,

> "Admitting an information for libel may be improper, yet the publication of this paper is deservedly punishable in an information for misdemeanour, and that of the highest kind; such sort of advertisements necessarily tending to raise tumults and disorders among the people and inflame them with a universal spirit of barbarity against a whole body of men, as if guilty of crimes scarce practicable and totally incredible." (2 Swanst. 508 note.)

The case of R. *v.* Burdett (4 B. & A. 314) where the indictment merely stated that the libel was published of and concerning *certain troops*, was also a case of a seditious libel, and the decision rested on the ground that the publication tended to excite disaffection against the Government.

Seditious words or writings are now expressly provided for by s. 124A, *ante* p. 112.

It seems to me that the effect of Explanation 2 is to leave the law just as it has hitherto been laid down by the English authorities. It is equally defamation to assail any person, or any company, association, or collection of persons. But in either case, the persons affected must be ascertained or ascertainable. It would be defamation to libel all the missionaries, all the doctors, or all the Brahmins of India. But I conceive that a satire would not be indictable which merely held up to reprobation the supposed misconduct of certain unidentified individuals of those classes, provided the individuals were not represented as being either co-extensive with the entire class or fair specimens of the entire class. If the imaginary personage is merely put forward as a type of some undefined portion of the class no individual has been libelled, nor has any class been libelled. It would be defamatory to say that all doctors were quacks, that all missionaries were immoral, or that all Brahmins were dishonest, but a fiction would not be libellous because it introduced an ignorant physician, an adulterous chaplain, or a scheming sheristadar.

Explanation 3.—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a*) A says, "Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(*b*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(*c*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

This section is a tremendous advance upon the English Criminal Law. Under the latter system, mere words not reduced to writing, will not support an indictment, unless they tend to produce some public injury, as by being seditious or grossly immoral; or by being

uttered to a Magistrate in the execution of his duty, which brings the administration of justice into contempt; or by being spoken as a challenge to fight a duel, which leads to a breach of the peace. (Arch. 746.) The law in respect to written defamation was stricter, though hardly even so strict as the present section, and yet the practical enforcing of it has been found to be wholly impossible. Even at civil law, oral defamation was not actionable, unless it charged the plaintiff with an offence punishable at law, or imputed to him some contagious disorder which would exclude him from Society, or ascribed to him misconduct or incapacity in his trade or profession, or unless some *special* damage could be shown to have arisen from it. (Broom Com. 762.) Under the present Code, however, any random dinner-table sarcasm may be treasured up and made the subject of an indictment. It is obvious, too, what fatal facility for malicious charges such a law as this will produce. It will only be necessary to get one or two witnesses to swear to the use of a disparaging remark. Contradiction will be impossible, corroboration will be unnecessary, and as the charge implies nothing morally degrading, the shield of character, which in so many cases is the best protection against false accusations, will be worthless. It is not too much to say that if the law of defamation as laid down in this Code were to be carried out, the whole population of India would appear monthly at the dock.

The language of s. 499, which speaks of words spoken or *intended* to be read, and of making *or* publishing an imputation, would seem at first to imply that an imputation not actually divulged might be indictable, so that the mere finding of a letter in a man's desk might make him criminally liable. This, however, is not in my opinion the meaning of the clause. The definition contemplates two classes of people—those who produce slander and those who promulgate the slander of others. But in neither case is there any slander at all till the defamatory words have been communicated to some one else, or, at all events, placed in course of communication so as to be beyond the control of the party using them. Hence, the mere writing of a libel is no offence, for it may never be known to any one but the writer, and till it is known it is no more an imputation against any person than it was while the thoughts remained in his own breast. But the mere delivering over, or parting with the libel, with the intent to scandalize another, is such an uttering or publishing of the defamatory matter as makes the offence complete. Accordingly, the fact of posting a letter amounts to a publishing, and it makes no difference whether the letter was open or sealed. (Reg. *v.* Burdett, 4 B. & A. 143, 144.) Giving a letter to be copied is a publication. (2 Hyde, 274.) Sending a libel to a man's wife is a sufficient publication. (Wenman *v.* Ashe, 22 L.J.C.P. 190; 13 C.B. 836.) But it is not so where the libel is only sent to the party himself. (Phillips *v.* Jansen, 2 Esp. 624; 10 W.R. 184; 6 N.W.P. 38).

Where the article complained of has appeared in a newspaper the readiest mode of proving publication is by the production from the office of the Magistrate or of the Court within whose jurisdiction the paper is published of the original declaration, or a certified copy of the declaration, which the printer and publisher are bound to make under Act XXV of 1867, s. 5, the production of which is sufficient evidence, unless the contrary is proved, that the person whose name

is subscribed to the declaration was the printer or publisher of every part of the periodical whose title corresponds with that of the periodical named in the declaration (s. 7.) The statement in the footnote of a newspaper that it is printed or published by such a person is not even *primâ facie* evidence against him that it was so published. (Reg. *v.* Stanger, 6 L.R.Q.B. 352.)

The act must be done with the intention to harm, or the knowledge that harm would follow. No evidence will be required upon this point, where the words are themselves defamatory. As Holroyd, J., remarked in the case of Reg. *v.* Harvey, (2 B. & C. 267),

"If the matter published was in itself mischievous to the public, the very act of publishing is *primâ facie* evidence to show that it was done *malo animo*, for when a publication having such an injurious tendency is proved, it is intended to have been done with a malicious intention, because the principle of law is, that a party must always be taken to intend those things and those effects which naturally grow out of the act done. If, therefore, the effects naturally flowing from the act of publishing the libellous matter in this case were mischievous to the public, it follows that the Judge was bound to tell the jury that malice was, by law, to be inferred; and that having been proved which, according to the principles of law, made inference of malice necessary, the *onus* of rebutting that inference was cast upon the defendant."

Malice, however, may be disproved by the defendant. He may show that the words do not in fairness bear the meaning put upon them, or that they are explained and cleared from their invidious construction by some other part of the same writing. And for this purpose, and conversely, for the purpose of showing malice, the whole of the document, whatever it may be, must be read together. (Arch. 667.)

Imputation of any truth which the public good requires to be made or published.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

The truth of an accusation will not always be in itself a sufficient defence. Private life ought to be sacred, and where no advantage is to be derived from publishing abroad the vices of another, the fact that those vices exist will not justify the act. But there are certain cases in which a man's private sins are a matter of public concern. It would be lawful to publish the infidel opinions of a clergyman, though not of a physician; the adulterous practices of a physician, though not of a barrister. These are matters in which the private vice becomes material, as affecting the discharge of a public duty. (See Kelly *v.* Tinling, 1 L.R.Q.B. 699.) This section, however, is wholly unnecessary, since it is included in the Ninth Exception. Every case protected under the First will also be protected under the Ninth Exception, but not *vice versâ*, since under the former clause the truth of the imputation must be established, which is not necessary under the latter.

Public conduct of public servants.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Here, again, the law as laid down by the Code differs from the English criminal law, though, on this occasion, on the side of lenity. By English law, you might criticise the acts of a public servant, but you might not disparage his character; you might say that particular conduct was unwise, impolitic, or illegal, but you might not say that the official behaved corruptly, maliciously, or treasonably. (See Rex. *v.* Lambert, cited 1 Russ. 337.)

Under the present Code, however, any fair criticism which rested upon inferences drawn from public acts would be privileged, provided there was no mis-statement of the facts from which the inferences were drawn. (Popham *v.* Pickburn, 31 L.J. Ex. 133, 136; 7 H. & N. 891.)

The words "in good faith" are defined by s. 52, (*ante* p. 26) as involving due care and attention.

As to the burthen of proof, in cases where an imputation is justified on the ground that it was made in good faith, the following remarks of the original Commissioners may be cited with advantage.

"Whether an imputation be or be not made in good faith is a question for the Courts of law. The burthen of the poof will lie sometimes on the person who has made the imputation, and sometimes on the person on whom the imputation has been thrown. No general rule can be laid down. Yet scarcely any case could arise respecting which a sensible and impartial Judge would feel any doubt. If, for example, a public functionary were to prosecute for defamation a writer who has described him in general terms as incapable, the Court would probably require the prosecutor to give some proof of bad faith. If the prosecutor had no such proof to offer, the defendant would be acquitted. If the prosecutor were to prove that the defendant had applied to him for money, had promised to write to his praise if the money were advanced, and had threatened to abuse him if the money were withheld, the Court would probably be of opinion that the defendant had not written in good faith and would convict him.

"On the other hand, if the imputation were an imputation of some particular fact, or an imputation which, though general in form, yet implied the truth of some particular fact which, if true, might be proved, the Court would, probably, hold that the burden of proving good faith lay on the defendant. Thus, if a person were to publish that a Collector was in the habit of receiving bribes from the Zemindars of his district, and were unable to specify a single case, or to give any authority for his assertion, the Courts would probably be of opinion that the imputation had not been made in good faith." (Report, 1837, p. 103.)

By Act XVIII of 1862, s. 27, it is provided, that "in proving the existence of circumstances as a defence under the 2nd, 3rd, 5th-10th exceptions to this section, good faith may be presumed unless the contrary appear."

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

See Henwood *v.* Harrison, 7 L.R.C.P. 606.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Publication of reports of proceedings of Courts of Justice.

It is not necessary that everything should be given *verbatim*, that every word of the evidence, of the speeches, and of the Judge's charge should be inserted, if the report is substantially fair and correct. (Hoare *v.* Silverlock, 9 C.B. 20; Andrews *v.* Chapman, 3 C. & K. 386.) But it is plain that a mere one-sided version, as, for instance, giving the speech for the prosecution and not that for the defence, the examination, but not cross-examination, would not come under this rule. And, accordingly, where the report contained merely a short summary of facts, and then gave the speech of the defendant's counsel, containing some obnoxious remarks, a plea that the libel was 'in substance a true and accurate report of the trial' was held insufficient, as it appeared upon the face of the declaration that the libel did not contain a true and accurate report of the trial, since it neither detailed the speech of the counsel for the plaintiff, nor the evidence, nor even the whole of the speech of the counsel for the defendant. (Per Littledale, J., Flint *v.* Pike, 4 B. & C. 482.)

Proceedings introductory to and in aid of the final investigation by a Court of Justice are privileged. For instance, the examination of a witness on commission, or *de bene esse*; so, in England, the proceedings held in jail, before a registrar in bankruptcy, upon the examination of a debtor in custody. (Ryalls *v.* Leader, 1 L.R. Ex. 296.)

This privilege has been held not to extend to reports of the proceedings at public meetings. This was so decided in a recent case (Davidson *v.* Duncan, 26 L.J.Q.B. 104; 7 E. & B. 229), where Lord Campbell, C.J. remarked,

"At such meetings there may be a great number of things spoken which are perfectly relevant, but are highly injurious to the character of others, and if a fair report of such statements is justifiable, in what condition would the injured party be, as he would have no opportunity of vindicating his character? We have no right to extend this privilege beyond what is already established. All we have to do is to see whether, as the law now stands, a party who is calumniated in this manner is without remedy; and I think he is not."

Similar decisions were given, where the libels complained of were contained in reports of the proceedings of a Parish Vestry, (Popham *v.* Pickburn, 31 L.J. Ex. 133; 7 H. & N. 891,) and of a meeting of poor Law Guardians. (Purcell *v.* Sowler, 2 C.P.D. 215).

It has however been suggested that the principle on which Davidson *v.* Duncan was decided may require qualification, and it has been expressly ruled that the conduct of persons taking part in a public meeting, on an occasion of general interest, may be made the subject of fair and *bonâ fide* discussion, and that unfavourable comments upon such conduct will be privileged. (Davis *v.* Duncan, 9 L.R.C.P. 396.)

Explanation.—A Justice of the Peace, or other Officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

This is a relaxation of English law, which formerly did not sanction the reporting of preliminary or *ex-parte* proceedings, such as those before a Coroner, Magistrate, Commissioner, or the like, unless they terminated in an acquittal. (Lewis *v.* Levy, 27 L.J.Q.B. 282; E.B. & E. 537.) Practically, however, every newspaper in England is full of such reports, and no one ever thinks of indicting them. The rule itself too, has been recently doubted. (4 L.R.Q.B. 94.)

Merits of a case decided in a Court of Justice; or conduct of witnesses and others concerned therein.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, Civil or Criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(*a*) A says, "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b*) But if A says, "I do not believe what Z asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

This section appears principally to aim at the opinions expressed upon a case after its decision. The privilege of parties, counsel, and witnesses in judicial proceedings will probably come under the Ninth Exception.

Merits of a public performance.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly, or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a*) A person who publishes a book submits that book to the judgment of the public.

(*b*) A person who makes a speech in public submits that speech to the judgment of the public.

(*c*) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(*d*) A says of a book published by Z, "Z's book is foolish, Z must be a weak man, Z's book is indecent, Z must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(*e*) But if A says, "I am not surprised that Z's book is foolish and indecent for he is a weak man and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Handbills, posted up or distributed in public, come within this exception. (Paris *v.* Levy, 30 L.J.C.P. 11; 9 C.B.N.S. 342.)

The extent to which criticism in the public press may be pushed was much discussed lately in the case of Campbell *v.* Spottiswood (32 L.J.Q.B. 185; 3 B. & S. 769.) There, the plaintiff, who was the proprietor and editor of a religious paper called the British Ensign, had

published a series of letters in which he strongly advocated the conversion of the Chinese, and as a means towards that end called upon the public to purchase 100,000 copies of the British Ensign. He also, from time to time, referred by name to persons who supported his paper, one of them in particular being a subscriber to the startling extent of 5,000 copies. The alleged libel was continued in an article in the Saturday Review, which embodied two distinct insinuations, first, that the subscription list was fictitious and fabricated for the purpose of decoying genuine subscribers. Secondly, that the plaintiff was putting forward religious aims and motives, solely for the purpose of selling his paper and filling his own pockets. The jury found a special verdict, that both insinuations were untrue, but "that the writer of the article did believe the imputations in it to be well founded."

Upon a motion to set aside the verdict it was held, first, that a writer in a public periodical has no other right than that of any other person of freely discussing the public acts or writings of another. Secondly, that although criticism of this sort is a man's right, it is not his duty, in the sense in which it is a duty to speak unreservedly in giving a character to a servant, or in bringing the conduct of a subordinate to the notice of his official superior, and, therefore, that such criticism is not "a privileged communication." Therefore, thirdly, that where the statements are in their nature defamatory, malice in law will be assumed, and that whatever the intention or belief of the writer may have been the only defence is to prove that the imputations are true. Had this article been made the subject of an indictment under the Penal Code, I imagine that the second imputation might have been justified under the Sixth Exception, if the jury were of opinion that the letters commented on were fairly susceptible of the inference drawn from them by the reviewer; but that no such justification could have been advanced for the first imputation, since nothing in the letters themselves could properly support the assertion that the alleged subscribers were mythical persons.

Censure passed in good faith by a person having lawful authority over another.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustrations.

A Judge censuring in good faith the conduct of a witness or of an officer of the Court, a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children, a schoolmaster whose authority is derived from a parent censuring in good faith a pupil in

the presence of other pupils, a master censuring a servant in good faith for remissness in service, a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

In the case of Dawkins *v.* Lord Paulet (5 L.R.Q.B. 94) it was held by three Judges, in opposition to the opinion of Cockburn, C.J., that no action would lie by an inferior officer against his superior for reports upon his conduct written by such superior in the ordinary course of his military duty, even though they were written maliciously and without reasonable or probable cause. The words "in good faith" contained in this section show that the view taken by the Chief Justice is the one which is to be applied to its construction.

Accusation preferred in good faith to a duly authorized person.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person, with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father, A is within this exception.

Communications of this sort have been held to be privileged, even though the person addressed was not the official superior of the party complained of and had not the power to remove him, provided he was a person whose official position made it his duty to enquire into the alleged misconduct. (Harrison *v.* Bush, 25 L.J.Q.B. 29, overruling in this respect Blagg *v.* Sturt, 10 Q.B. 899.)

Where, also, a privileged communication has been made, in consequence of which an enquiry takes place, everything that is said or written *bonâ fide* and relevant to the enquiry and in furtherance of it is equally privileged. (Beatson *v.* Skene, 29 L.J. Ex. 430; 5 H. & H. 838.)

Imputation made in good faith by a person for the protection of his interest.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations.

(*a*) A, a shopkeeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money for I have no opinion of his honesty." A is within the exception if he has made this imputation on Z in good faith for the protection of his own interest.

(*b*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the exception.

Under this head will come the privilege of Counsel, to whom the greatest latitude is allowed in the conduct of a cause. As Holroyd, J., observed in an action against Sir James Scarlett,

"No action is maintainable against the party, nor, consequently, against the counsel, who is in a similar situation, for words spoken in a course of justice. If they be fair comments upon the evidence and be relevant to the matter in issue, then unless express malice be shown the occasion justifies them. If, however, it be proved that they were not spoken *bonâ fide*, or express malice be shown, then they may be actionable. At least, our judgment in the present case does not decide that they would not be so. (Hodgson *v.* Scarlett, 1 B. & A. 246.)

An attorney acting as a counsel is similarly privileged (Mackay *v.* Ford, 29 L.J. Ex. 404; 5 H. & N. 792), and a Vakeel in the Mofussil would come under the same rule. (See Act I of 1872, s. 150.)

Nor can any words, however defamatory and libellous in themselves, be made the ground of an indictment by English law when used in an affidavit made in any judicial proceeding, or in a defence made by a party to suit. (Henderson *v.* Broomhead, 28 L.J. Ex. 360; 4 H. & N. 569; 1 B. & A. 240, 244. See Bank of British North America *v.* Strong, 1 App. Ca. 307.)

The privilege of witnesses at a trial is even stronger, because they only speak in reply to questions put to them, which they cannot refuse to answer, and since there is an express remedy by indictment for perjury if they say anything which they know to be untrue. Hence, it has been held in England that even an action for damages will not lie against a witness for anything he said in his evidence, even though the statement be false and defamatory, and uttered maliciously, and without reasonable and probable cause for believing it to be true, and though the plaintiff has suffered damages in consequence of it. One result, as Jervis, C.J. pointed out,

"Would be this, that in a civil suit you would be trying a witness for perjury on the evidence of one witness, which you cannot do in a criminal proceeding without the evidence of two." (Revis *v.* Smith, 25 L.J.C.P. 195; Acc. Dawkins *v.* Ld. Rokeby, 8 L.R.Q.B. 255: affd. 7 L.R.H.L. 744; Seaman *v.* Netherclift, 1 C.P.D. 540. And in the P.C. 11 B.L.R. 321.)

And so it was held with regard to language used by a coroner in addressing a jury (Thomas *v.* Chirton, 31 L.J.Q.B. 139; 2 B. & S. 475), and by a County Court Judge while trying a case (Scott *v.* Stansfield, 3 L.R. Ex. 220.)

But the insertion of the words "in good faith" makes the rule more stringent under the Penal Code. Accordingly, it has been held in Bengal that a charge will lie against a person for defamatory expressions used by him against his prosecutor, while he was a

defendant in a criminal case, when those expressions were not used with "due care and attention." (5 R.J. & P. 42; 9 Bomb. H.C. 459.)

It is singular that the right to publish with impunity a report of a parliamentary debate, which contains matter defamatory of an individual, should not have been established till quite recently. It has now, however, been settled that such a right does exist, on the same ground as that which justifies the publication of proceedings in a Court of Justice, viz., the advantage of publicity to the community at large. (Wason *v.* Walter, 4 L.R.Q.B. 73.)

Where after an election the agents of one candidate transmitted to the agents of another candidate a certificate, stating that the latter had been guilty of bribery, this was held not to be privileged. Dickeson *v.* Hilliard, 9 L.R. Ex. 79.) It is obvious that no benefit to the public or the defeated candidate could arise from the assertion that the successful candidate had been guilty of bribery. It was not a necessary step towards taking proceedings to set aside the election, and the person to whom it was made had no jurisdiction over the supposed guilty party.

Caution intended for the good of the person to whom it is conveyed or for the public good.

Tenth Exception.—It is not defamation to convey a caution in good faith to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

There are many occasions in private life in which it is absolutely necessary to give one's opinion freely of others in a manner which may be very injurious to them. As Lord Ellenborough, C.J. said in a case which has already been frequently referred to (Hodgson *v.* Scarlett),

"The law privileges many communications, which otherwise might be considered as calumnious, and become the subject of an action. In the case of master and servant, the convenience of mankind requires that what is said in fair communication between man and man, upon the subject of character, should be privileged if made *bonâ fide* and without malice. If, however, the party giving the character knows what he says to be untrue, that may deprive him of the protection which the law throws around such communications." (1 B. & A. 240.)

And, so, the rule has been very recently laid down, "that if the circumstances bring the Judge to the opinion that the communication was made in the discharge of a moral or social duty, or on the ground of an interest in the party making it with a corresponding interest in the party receiving it, and that the words which passed were delivered in the honest belief that the party was performing his duty in making the communication, the Judge is to say that the action fails." (Per Erle, C.J., Whitely *v.* Adams, 33 L.J.C.P. 89, 491; 15 C.B.N.S. 392; Cowles *v.* Potts, 34 L.J.Q.B. 247; Lawless *v.* Anglo-

Egyptian Co., 4 L.R.Q,B. 262; Wren *v.* Shield, Ibid. 730.) See also a very full discussion of the law in Henwood *v.* Harrison, 7 L.R. C.P. 606; Hart *v.* Gumpach, 6 L.R.H.L. 439; Laughton *v.* Bp. of Sodor and Man, Ibid. 495.

And, so,

"Words spoken *bonâ fide*, by way of moral advice, are privileged; as, if a man write to a father advising him to have better regard to his children, and using scandalous words, it is only reformatory, and shall not be intended to be a libel. But if, in such a case, the publication should be in a newspaper, though the pretence should be reformation, it would be libellous." (Roscoe, 438; Somervill *v.* Hawkins, 20 L.J.C.P. 131; 10 C.B. 583.)

For, in the latter case, the injury done by spreading the evil report is greater than the object in view requires. And it is as well to observe, that the privilege extended to all such communications goes no further than necessity involves. That which it may be quite justifiable to say or write to a particular person will become libellous if spread abroad to the world. Even in the case of a member of parliament who publishes an amended version of his speech he is liable for that, though he might have spoken the same words in his place with impunity. (R. *v.* Fleet, 1 B. & A. 384.)

And, so, a printed letter by a clergyman, professing to warn his parishioners against a new school on the ground that the schoolmaster was acting in opposition to his authority, was held not to be privileged. (Gilpin *v.* Fowler, 23 L.J. Ex. 152.)

On the same ground, a letter stating the conduct of a dismissed servant, which might have been considered privileged if it had been limited to a recital of facts, was held to have lost that privilege, inasmuch as it contained expressions about the plaintiff being a raving madman, and other expressions which were, in the opinion of the Court, excessive. (Fryer *v.* Kinnersley, 33 L.J.C.P. 96; 15 C.B. N.S. 422.) In England, where the occasion justifies imputations which are themselves defamatory, the use of language more violent than is necessary is evidence of malice, but not conclusive, and if malice is in fact negatived the privilege is not taken away. (Cowles *v.* Potts, 34 L.J.Q.B. 247, 250; Spill *v.* Maule, 4 L.R. Ex. 232.) But under the Penal Code such expressions would lose their privilege if used without that "due care and attention" which is essential to "good faith." (See *ante* p. 402.)

Where a communication which is privileged as regards the person by whom and to whom it is addressed necessarily contains a defamatory statement against a third person, this is also privileged. For instance, when a parishioner mentioned to the rector of his parish a public rumour which imputed fraud to him and to his solicitor, the plaintiff was held to have a good defence to the action brought by the solicitor. (Davies *v.* Shead, 5 L.R.Q.B. 608.)

Punishment for defamation.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

503. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Criminal intimidation.

The word injury is defined by s. 44 (*ante* p. 26) as denoting any harm *illegally* caused to another. Therefore, it will not be an offence to threaten another with an action or indictment which might lawfully be preferred against him. (8 Bomb. C.C. 101.) Though if he obtained money by the threat, it would apparently be punishable under s. 388, and s. 213.

The threat need not be directly addressed to the party whom it is intended to influence. It is sufficient, although it is addressed to others, if it is intended to reach the ears of the party threatened, and is used with any of the intentions stated in the section. (Rulings of Mad. H.C. of 1865, on s. 506.)

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Intentional insult with intent to provoke a breach of the peace.

See as to the summary jurisdiction of the Magistrate of the District over offences under this section and s. 506, Crim. P.C., s. 222.

505. Whoever circulates or publishes any statement, rumour, or report which he knows to be false, with intent to cause any officer, soldier, or sailor in the Army or Navy of the Queen to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Circulating false report with intent to cause mutiny or an offence against the State, &c.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years,

Punishment for criminal intimidation.

or with fine, or with both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death, or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

If threat be to cause death or grievous hurt, &c.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Criminal intimidation by an anonymous communication.

508. Whoever voluntarily causes or attempts to cause any person to do any thing which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered, by some act of the offender, an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Act caused by inducing a person to believe that he will be rendered an object of the divine displeasure.

Illustrations.

(*a*) A sits dhurna at Z's door with the intention of causing it to

be believed that by so sitting he renders Z an object of divine displeasure. A has committed the offence defined in this section.

(*b*) A threatens Z that unless Z performs a certain act A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this section.

The words "by some act of the offender" must be read with the verb "become," as well as with the verb "be rendered," otherwise the eloquence of a preacher who draws a double contribution at a charity sermon, by exciting the spiritual fears of his congregation, would be criminal. It would be criminal for a clergyman to curse an offender from the altar, as used occasionally to be done in Ireland within my memory.

Word or gesture intended to insult the modesty of a woman.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

This section assumes the modesty of the woman and an intention to insult it, therefore no offence will have been committed where the woman is of a profession or character which negatives the existence of scrupulousness. Nor, I conceive, would there be any offence, even though the woman were virtuous, if under the circumstances of the case the man *bonâ fide* and reasonably believed that his advances would be well received and would lead to ulterior results. For in such a case his intention would be not to insult, but to solicit or excite. It is obvious, too, that each case must be judged of according to the degree of intimacy and the rank of life of the parties. That which would be an insult to the modesty of the lady might be none in the case of her ayah.

What is an "intrusion upon the privacy of a woman?" In the case of a Mahometan, or a Hindu female of rank, probably any chamber in which she is, may be considered a place of privacy. With the European this would not be so, unless in rooms to which males have no implied right of admission. But where the only overt act consists in such an intrusion, how is the intention to insult her modesty to be evidenced, or may it be assumed? I fancy it may be assumed where the intrusion is so unlawful and takes place under such circumstances that no other intention is fairly conceivable; as, for instance, if a man were to gain admission to a lady's sleeping apartment under circumstances which negatived an intention to steal. In other cases

the intention would have to be proved by independent facts, as, for instance, his conduct while there.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten Rupees, or with both.

Misconduct in public by a drunken person.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

Illustrations.

(*a*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and, therefore, is guilty under this section.

(*b*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket; A fails in the attempt in consequence of Z having nothing in his pocket: A is guilty under this section.

Prior to the completion of a crime three stages may be passed through. First, an intention to commit the crime may be conceived. Secondly, preparation may be made for its committal. Thirdly, an attempt may be made to commit it. Of these three stages the mere forming of the intention is not punishable under the Penal Code. Nor is the preparation for an offence indictable. "Between the preparation for the attempt and the attempt itself there is a wide difference. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence; the attempt is the direct movement towards the commission after the preparations are made. To illustrate: a party may purchase and load a gun, with the declared intention to shoot his neighbour; but until some movement is made to use the weapon upon the person of his intended victim there is only preparation and not an attempt." Accordingly, in the case which gave rise to the above remarks, it was held, that declarations of an intent to contract an incestuous marriage, followed by elopement for the avowed purpose and sending for a Magistrate to perform the ceremony, did not amount to an attempt to contract the marriage. That there could be no attempt until the parties stood before the Magistrate about to begin the ceremony. (People *v.* Murray, cited 1 Bishop, § 685, n. 3.) See illustrations *c* and *d* to s. 307 *ante* p. 264.

The real difficulty arises in determining where a given act, or set of acts, passes from preparation into an indictable attempt. Possibly there is greater difficulty in framing beforehand a definition which should apply correctly to any particular case, than in deciding correctly upon the case when it occurs. In America the rule has been laid down, "that the attempt can only be manifested by acts which would end in the consummation of the offence, but for the intervention of circumstances independent of the will of the party."

So, where the servant of a contractor who was sent to deliver meat put a false weight into the scale, with the intention of appropriating the difference, but was detected in the act, it was held that he was rightly convicted of an attempt to steal. Erle, C.J. said, "it is said, however, that the evidence here does not show any such proximate overt act as is sufficient to support the conviction for on attempt to steal the meat. In my opinion there were several overt acts, which brought the attempt close to completion. These were the preparation of the false weight, the placing it in the scale, and the keeping back the surplus meat. It is almost the same as if the prisoner had been sent with two articles, and had delivered one of them as if it had been two. To complete the crime of larceny there only needed one thing, the beginning to move away with the property."

Blackburn, J. said,

"I am of the same opinion. There is, no doubt, a difference between the preparation antecedent to an offence and the actual attempt. But if the actual transaction has commenced, which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime. Then, applying that principle to this case, it is clear that the transaction which would have ended in the crime of larceny had commenced here." (Reg. *v.* Cheeseman, Leigh & Cave, 140, 145.)

In a case in Bengal it appeared that incendiarism had on several

occasions occurred in a village, produced by a ball of rags with a piece of burning charcoal in it. The prisoner was found in possession of a ball of that description containing burning charcoal concealed in his dress. At the time he was seized he was engaged in a dispute with the other villagers, who charged the previous acts as having been done by his caste, and who were proceeding to drag him to the police. The ball dropped out while they were hustling him about. Glover, J., thought that it must be assumed "that a person going about at night provided with an apparatus specially fitted for committing mischief by fire intends to commit that mischief, and that he has already begun to move towards the execution of his purpose, and that is sufficient to constitute an attempt." Mitter, J. was of an opposite opinion. He said, "In order to support a conviction for attempting to commit an offence of the nature described in s. 511, it is not only necessary that the prisoner should have done an overt act towards the commission of the offence, but that the act itself (that is the overt act) should have been done in the attempt to commit it (that is the offence)." (3 B.A. Cr. 55.) It certainly seems to me that Mr. J. Mitter was right. The prisoner probably intended to commit arson and had prepared to commit it, but I cannot see that he had attempted to commit it. It is quite possible that the discussion among the villagers, showing that their suspicions were aroused against himself and his caste, would have induced him to give up his design and never to make any attempt. In two cases in the N. W. Provinces the act done was held not to have passed beyond the stage of preparation for an offence. In one the prisoner, intending to forge a document in the name of one Chotak, purchased a stamp in Chotak's name, upon which the stamp vendor endorsed Chotak's name as purchaser. He then arrested the prisoner. (4 N.W.P. 46.) In the second the prisoner, intending to commit bigamy, caused the banns to be published. (1 All. 316). In both cases it was held that no attempt to commit the crime had been made. On the other hand, when the person had dug a hole in order to place salt therein, for the purpose of furnishing false evidence against his enemy, it was held that he might be convicted of an attempt to fabricate false evidence. (4 N.W.P. 133.)

A very curious question arises in cases where the completion of the crime has all along been physically impossible. Here a conflict of laws exist. In England, it has been ruled that a conviction for an attempt to steal from the person or in a dwelling-house was bad, when in fact there was nothing which could have been stolen in the pocket into which the hand was thrust or in the house which was entered. (Reg. *v.* Collins, Leigh & C. 471; Reg. *v.* McPherson, 1 Dears. & B. 197; Reg. *v.* Johnson, 34 L.J.M.C. 24.) In the two former cases, no doubt, the indictment stated that the goods actually were in the place where the attempt to steal was made, and in Reg. *v.* McPherson certain specific goods were named. Hence the prisoner would have been convicted of doing something different from what he was charged with. Had all mention of specific goods been omitted, as it might have been (Reg. *v.* Johnson, Leigh & C. 489), it is possible that a different decision might have been arrived at. Still, the language used seems to lay down the wide principle, that the crime which was attempted must have been possible. Cockburn, C.J. said,

"The word, attempt, clearly conveys with it the idea that if the attempt had succeeded the offence charged would have been committed, and, therefore, the prisoner might have been convicted if the things mentioned in the indictment, or any of them, had been there; but attempting to commit a felony is clearly distinguishable from intending to commit it. An attempt must be to do that which, if successful, would amount to the felony charged; but here the attempt never could have succeeded, as the things which the indictment charges the prisoner with stealing had been already removed. The jury have found him guilty of attempting to steal the goods of the prosecutor, but not the goods specified in the indictment." (1 D. & B. 202.) And, again, he is said, in the later case (L. & C. 474),

"There must be an attempt which, if successful, constitutes the full offence. Suppose a man were to go into a house without breaking and entering it, with intent to steal, and were to find the house empty, could he be convicted?"

On the other hand it has been ruled in America (1 Bishop, § 675, 676) that a man may be convicted of attempting to steal by thrusting his hand into an empty pocket, and the illustrations to s. 511 are authoritative rulings that the Code is to be interpreted in the same way. (See too Reg. *v.* Cassidy, 4 Bomb. H.C. Cr. 17, *ante* p. 264.) As Mr. Bishop says (1 Bishop, § 682),

"The doctrine on principle is, that if, in matter of fact, some circumstance attends the particular instance, unknown to the offender, which circumstance is only special to the instance and not ordinarily attending similar cases, the failure of the offender to do the thing intended, through the intervention of this circumstance, prevents not his act from being indictable. It is then an attempt; precisely as, the circumstance not intervening, it would have been an executed substantive crime. Therefore, also, if the attempt consists in discharging a ball from a gun into a dwelling-house believed to be inhabited, while in truth no person is in the house, or inflicting a wound on a man who, unknown to the aggressor, is encased in armour, or in sending a challenge to one whose principles will not permit him to fight, or in administering poison to one who has already an antidote in his stomach, or in doing any other thing which fails by reason of some such casual obstacles intervening,—the attempt is complete, since there is created the apparent insecurity against which the criminal law protects the public."

But what are we to say to the case put by Bramwell, B. (1 D. &. B. 201), "suppose a man, believing a block of wood to be a man who was his deadly enemy, struck it a blow intending to murder, could he be convicted of attempting to murder the man he took it to be?"

I imagine that the answer to the question would depend entirely upon the circumstances of the case. If a person were to enter a man's house by night intending to murder him, and were to fire at what he supposed to be his enemy, though it turned out to be only his coat, it seems to me that the person firing would be most justly convicted. But if a man in a jungle, seeing something move, which he supposes to be his enemy, fires at it, and it turns out that there is no human being near, then I conceive that he could not be indicted for an attempt to murder. In the former case every circumstance necessary for the commission of the crime is present, except one, of whose absence the party is ignorant. In the latter case no single circumstance is present. The person has the intention to commit a crime, but his act does not in any degree lead towards the commission of it, or even in that direction. (acc. 4 N.W.P. 46.)

It must be admitted, however, that cases may be imagined in which the distinction would be narrow and almost evanescent. It may be

more rigorous logic to hold that an attempt has only taken place, where the act done towards the commission of the crime would, if continued, have terminated in the complete offence. But the view taken by the American and Continental jurists (1 Bishop, § 663), and by the authors of the Penal Code, is more conducive to public safety.

From the foregoing remarks it will appear, that to constitute an attempt there must be an intention to commit a particular crime, a commencement of the commission, and an act done towards the commission. Sometimes the act done may be innocent, except for the intention; as for instance, putting money into a man's pocket, in order to charge him with theft. (1 Bishop, § 685.) Sometimes it may be criminal, as for instance an attempt to rob, commenced by an assault. But in either case, if the act is to be aggravated by the particular intent assigned, that intent must be proved, as being the essence of the offence, and though it may be presumed from the surrounding circumstances, it cannot be assumed. For instance, if a man is found in a house at midnight, it might under one set of circumstances be the fair presumption that he came to steal; under another set, that he came to commit adultery; under a third set of circumstances, no presumption of any criminal intent might arise. Where a particular intent is charged, as constituting an attempt to commit a specific crime, it is not necessary that there should be any evidence of the intent besides the circumstances connected with the abortive act itself. But unless those circumstances, coupled with the other evidence (if any), establish, not only some criminal intent, but the particular criminal intent which has been charged, the prisoner must be acquitted.

Hence, also, the particular intention must last until such an act has been done, as would, by its union with the intention, constitute a criminal attempt. But as soon as this stage has been reached, the criminal attempt is complete. Should the party then abandon the prosecution of the offence, from fear, fatigue, repentance, or any other cause, he will still be punishable for the attempt. For instance, if a man goes to a place armed, intending to commit murder, but when he is there does not find his enemy, or having found him shrinks from attacking him, this would not be an attempt. (1 D. & B. 201.) So, if he went to a house with implements of house-breaking, intending to commit burglary, but on reaching the door heard cries of distress and broke in to rescue the sufferer, this would neither be house-breaking nor an attempt at it. But if a thief, having entered a house in order to steal, finds a dying man inside and then gives up his criminal object, and remains in the house merely to assist him, he would still be indictable for an attempt to steal in a dwelling-house. (1 Bishop, § 366, 664, 692.) And it has been so ruled in America, where, in cases of attempt to commit rape, the prisoner had voluntarily desisted before consummating his object. (Ibid. § 664, n. 5.)

It has been held in England, that the delivery of poison to an agent, with directions to him to cause it to be administered to another under such circumstances, that (if administered) the agent would have been the sole principal felon, was not "an attempt to administer poison" within the third section of 1st Vict. c. 85.

(William's case, 1 Den. C.C. 39.) In that case the agent had given immediate information against the prisoner. Had the case occurred in India the indictment should, I think, have been for abetting, not for an attempt. A person ought only to be indicted under s. 511, where the crime, if completed, would have been his act, or one for which he would have been jointly responsible.

Where a prisoner has been indicted for committing any offence the Jury may find him not guilty of committing, but guilty of attempting to commit the offence under this section. (Act X of 1875, s. 22.) And he might be similarly convicted under s. 457 of the Cr. P.C.

An attempt to commit an offence punishable with whipping is not so punishable. (2 R.J. & P. 272 ; 3 Bomb. H.C. Cr. 37.) Nor can a person who is convicted of an attempt to commit an offence under Chapters XII or XVII be subjected to extra punishment under s. 75 in consequence of a previous conviction under those chapters. This only applies to cases where both convictions have been punishable under those chapters. (Reg. *v.* Moonesawmy, per Bittleston, J., 1st Mad. Sessions, 1865.) But on a second conviction for an attempt to commit robbery, whipping may be inflicted under cl. 9, s. 4 of Act VI of 1864.

BOOK II.

CRIMINAL PLEADING.

I. INDICTMENTS.
1. Form of
2. Joinder of Offences.
3. Joinder of Defendants.

II. DEMURRER.

III. PLEAS.
1. Want of Jurisdiction.
2. Not Guilty.
3. Previous Acquittal.
4. Previous Conviction.

I. INDICTMENTS.

1. *Form of Indictment.*

The object of an indictment is to inform the Judge of the offence which he has to try, and the prisoner of the charge which he has to meet. It is necessary, therefore, that the indictment should upon its face contain such statements as amount to a criminal offence, otherwise the indictment might be fully proved and yet no crime be established. No necessary ingredient can be supplied by evidence if it has not been alleged in the indictment, for if such looseness were allowed the prisoner would be convicted not upon the facts with which he had been charged, but upon something in addition to them. (Arch. 43; Reg. *v.* Richmond, 1 C. & K. 240.) Accordingly, in a case before the Supreme Court, where the prisoners were indicted under 9 Geo. IV, c. 74, s. 69, which makes it an offence to decoy children from their parents by force or fraud, and the indictment contained no allegation that either force or fraud had been employed, it was held that no conviction could be had. (Reg. *v.* Habeeb Sah, 2nd Madras Sessions, 1860.) A further reason is, that if no such accuracy were required the Court of Appeal would be unable to ascertain by an inspection of the record whether any conviction could legally ensue, and whether the punishment awarded was warranted by the crime. Not only must *an* offence be alleged, but *the particular* offence must be stated, otherwise the indictment will not inform the prisoner of the charge against him with sufficient accuracy to put him upon his guard. It is not sufficient to assert that he robbed, cheated, or defamed. It is necessary to state whom he robbed, and how he cheated, and what defamatory words he used. As Lord Ellenborough, C.J. said (Reg. *v.* Stevens, 5 East, 258),

"Every indictment or information ought to contain a complete description of such facts or circumstances as constitute the crime, without inconsistency or repugnance; and, except in particular cases, where precise technical expressions are required to be used, there is no rule that other words shall be employed than such as are in ordinary use."

Where the offence consists simply in the act, it never was held necessary to state the means by which the act was committed. For instance, in an indictment for robbery, house-breaking, or theft, it is needless to state the particular means by which the house was broken, the prosecutor compelled to give up his money, or the property fraudulently obtained. It is sufficient to state generally that the prisoner broke and entered the house, robbed the prosecutor, or stole the money, for, if he did so, the specific means are immaterial. (Stark. Pl. 87.)

But where the offence is only indictable if committed under certain circumstances or by particular means, those circumstances and means must be set out, in order to enable the Court to see if they constitute a charge for which the prisoner ought to be put upon his defence. It is not every fraud, false statement, or false writing which is indictable, and, therefore, it is not sufficient to say generally that a person cheated, gave false evidence, or committed forgery, without showing what were the acts which he did which are alleged to make out the crime. (Ibid. 88.)

The English law of criminal pleading was so strict in requiring fulness of statement and accuracy of proof, that absurd failures of justice constantly occurred. For instance, describing a person as Tabart who turned out to be Tabert, or Shutliff who proved to be Shirtliff, was held to be an irremediable defect. So, in the celebrated case of Lord Cardigan's duel, the whole charge broke down, because it was found impossible to prove that a particular person possessed the flowing name of Harvey Augustus Garnett Phipps Tucker, by which he had been incautiously described in the indictment. So, in a case of murder it was held to be insufficient to say that the wounds were about the breast, or about the navel, or on the side or arm, without saying which arm or side. (Ibid. 86.)

Such niceties have never been allowed in Mofussil practice, and are not likely to be introduced now. The Criminal Procedure Code (s. 439) provides that "the charge shall state the offence with which the accused person is charged. If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only. If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the prisoner notice of the matter with which he is charged. The Act and section or sections of the Act against which the offence is said to be committed must be referred to in the charge." s. 440. "The charge shall contain such particulars as to the time and place of the alleged offence, and the person against whom it was committed, as are reasonably sufficient to give notice to the accused person of the matter with which he is charged." s. 441. "When the nature of the case is such that the particulars mentioned in ss. 439 & 440 do not give sufficient notice to the accused person of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose."

The illustrations annexed to the above sections, and the examples of charges contained in Schedule III, are quite in conformity with the

principles above laid down as applicable to a modern English indictment.

It follows, then, that a charge may be defective in two very different ways. It may allege against the accused the actual offence which he committed, but with a defective or erroneous statement of particulars; or it may properly charge him with the offence which he is supposed to have committed, and the evidence may establish that he committed quite a different crime, which was not contemplated at the time the indictment was framed.

As to the first defect, the Cr. P.C., s. 443, and Act X of 1875, s. 24, provide, that "No error either in the way in which the offence is stated, or in the particulars required to be stated in s. 441, and no omission to state the offence, or to state those particulars, shall be regarded in any stage of the case as material, unless the person accused was in fact misled by such error or omission."

For instance, the omission of the word 'dishonestly' in a charge under s. 411 is no ground for reversing a conviction, where the accused fully understood the offence with which he was not charged, and was not prejudiced by the omission. (10 Bomb. H.C. 373.)

Such errors or omissions may either be passed over without notice, if not misleading to the prisoner, or the charge may be amended, at the instance of the prisoner or of the Court. Where an amendment takes place the trial may be postponed, or a new trial may be ordered, if the justice of the case requires it. (Cr. P.C., ss. 444-451; Act X of 1875, ss. 9-12 & 15.)

As to the second sort of defect, the Cr. P.C., s. 456 and Act X of 1875, s. 21, provide, that "If in the case mentioned in the last section (that is, where the facts made out admit of an alternative charge, see *ante* p. 42,) one charge only is brought against an accused person, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

Illustration.

"A is charged with theft. It appears that he committed criminal breach of trust or receiving stolen goods. He may be convicted of criminal breach of trust or receiving stolen goods, though he was not charged with it."

A different contingency is provided for by s. 457 and Act X of 1875, s. 22, "When a person is charged with an offence and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it."

For instance, on a charge of criminal breach of trust as a carrier, or of murder, he may be convicted of simple breach of trust, or of culpable homicide, or causing death by negligence. But this section only applies to cases "where the graver charge gives the accused notice of all the circumstances going to constitute the minor one of

which he may be convicted. The latter is arrived at by mere subtraction from the former. But when this is not the case, where the circumstances embodied in the major charge do not necessarily and according to the definition of the offence imputed by that charge constitute the minor offence also, the principle no longer applies, because notice of the former does not necessarily involve notice of all that constitutes the latter. The section is not intended to apply to a collateral offence. It is not open to a Court to find a man guilty of an abetment of an offence (*e.g.* murder) on a charge of the offence itself." (Per West, J., 11 Bomb. H.C. 241.)

Where an act is made criminal, except in certain excepted cases, the English practice has been, that

"If there be any exception contained in the same clause of the act which creates the offence the indictment must show, negatively, that the defendant, or the subject of the indictment, does not come within the exception. If, however, the exception or proviso be in a subsequent clause or Statute, or, although in the same section, yet if it be not incorporated with the enacting clause by any words of reference, it is in that case matter of defence for the opposite party and need not be negatived in the pleading." (Arch. 53.)

But under s. 439 of the Criminal Procedure Code, "the fact that the charge is made shall be equivalent to a statement that every legal condition necessary by law to constitute the offence charged was fulfilled in the particular case;" and, therefore, that neither the general exceptions of the Penal Code nor any of the special exceptions of the particular section apply. See *illus. a & b.* In the High Court, s. 26 of Act XVIII of 1862 provides that it shall be unnecessary to negative either the general exceptions contained in Chapter IV, or the special exceptions contained in ss. 136, 300, 323-326, 375, or 499. Hence, in charges framed under the Penal Code either in the mofussil or in the High Court, it will never be necessary to negative any exceptions. (9 Bomb. H.C. 451.)

The necessity of negativing such exceptions does not even under English law carry with it any obligation to support this negative assertion by evidence. Formerly this seems to have been the case.

"But the correct rule upon the subject seems to be, that, in cases where the subject of such averment relates to the defendant, personally, or is peculiarly within his knowledge, the negative is not to be proved by the prosecutor, but, on the contrary, the affirmative must be proved by the defendant, as matter of defence; but upon the other hand, if the subject of the averment do not relate personally to the defendant, or be not peculiarly with his knowledge, but either relate peculiarly to the prosecutor, or be peculiarly within his knowledge, or at least be as much within his knowledge as within the knowledge of the defendant, the prosecutor must prove the negative." (Arch. 188.)

For instance, it will be necessary for a party who wishes to excuse himself for an act of apparent defamation to show, affirmatively, that he comes within the exceptions in s. 499. A person indicted under s. 245 for taking coining tools out of a Mint will have to show his lawful authority for doing so, though the offence consists in doing it "without lawful authority." (Indian Evidence Act, 1872, s. 105; Reg. *v.* Harvey, 1 L.R.C.C. 284.) But where an act of culpable homicide, committed under grave provocation, is charged as murder,

it will be necessary for the prosecution to establish some one of the three provisoes which take the case out of Exception 1 of s. 300.

2. *Joinder of Offences.*

Only one crime should be charged in the same count. Therefore, it would be improper to charge the same defendant with assaulting A and stealing from B in the same count. Sometimes, however, one act affects different people; as, for instance, the same writing may be defamatory of a dozen different persons and may be charged as such. So, different acts may be so united in point of time as to be all one transaction; for instance, an assault upon several persons. Or, again, one transaction may in its progress involve different crimes, of which one is merely a step to the other, as, for instance, breaking into a house and stealing therein, or beating a man and taking away his purse. In all these cases the acts may be charged in a single count. (Arch. 55.)

The ground upon which a joinder of several crimes in one charge is forbidden is on account of the inconvenience which it would cause to the prisoner in his defence. Therefore, it seems that such a count is good after judgment. (Ibid.)

The practice was different as to charging different offences in different counts. The general rule was, that different felonies should not be charged in the same indictment on account of the embarrassment resulting to the prisoner, but different misdemeanours might be so charged provided the judgment upon all was the same. (Arch. 60-63.) The distinction between the two classes of crimes now has ceased, and, therefore, the Courts will probably allow the joinder, unless in cases where there would be some real disadvantage to the prisoner.

It never was any objection that several charges were united in the same indictment where they all arose out of the same transaction, as, for instance, where an indictment contained five counts for setting fire to five houses belonging to different owners, but they were all in a row and consumed by the same fire. (Arch. 61.)

So, also, there is never any objection to charging the same offence in different ways, as, for instance, charging the same beating as "voluntarily causing hurt" under s. 321, and "voluntarily causing grievous hurt" under s. 322.

The practice as laid down in the Criminal Procedure Code, Chapter XXXIII, and in Act X of 1875, Chapter III, is similar to that just stated. There must be a separate charge for every distinct offence of which any person is charged, and every such charge must be tried separately (s. 452; Act X of 1875, s. 17), unless the offences are of the same kind, in which case the accused may be tried at the same time for any number of them, not exceeding three, which were committed within one year of each other (s. 453; Act X of 1875, s. 18); or unless the offences constitute different parts of the same transaction or different aspects of the same transaction, or consist of several acts which form, when combined, an offence distinct from that arising out of each of the acts taken separately. (S. 454; Act X of 1875,

s. 19. See it quoted, *ante* p. 39.) In such a case the charge must contain as many heads as there are offences suggested, but all may and ought to be tried at the same time.

"If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed all or any of such offences; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences. For instance; A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust, or cheating. He may be charged separately with theft, criminal breach of trust and cheating, or he may be charged with having committed either theft, or criminal breach of trust, or cheating." (Crim. P.C., s. 455; Act X of 1875, s. 20.)

3. *Joinder of Defendants.*

It is never necessary to join several defendants in the same indictment, as each is singly answerable for his own crime. There are some cases in which a crime cannot possibly be committed by any person singly, as, for instance, the offences of joining in an unlawful assembly (s. 141), rioting (s. 146), or taking part in an affray (s. 159). The indictment must, therefore, show that there were a sufficient number concerned in it to make the crime possible, but any one may be indicted in the absence of others. So, also, the guilt of a receiver of stolen property, or of an accessary to a crime, involves the idea of a principal criminal, but such receivers or accessaries may be indicted separately from the principal. (Act XVIII of 1862, ss. 21, 22.)

Where several persons are joined in the same indictment they may be indicted in the same count or in separate counts. They can only be joined in the same count when the offence is capable of being committed jointly, as, for instance, a murder, house-breaking, or assault. But this cannot be done where the offences are in their very nature the separate offence of each, as in the case of perjury. Here, the false evidence is complete in itself and cannot be shared in by any other person. An indictment charging two persons with perjury in the same count would, in the High Court, be bad on demurrer, or in arrest of judgment, after conviction. (Arch. 58; Rex. *v.* Phillips, 2 Stra. 921) though the error would now be amended, at all events if discovered before verdict. (Act X of 1875, s. 10.)

Where the offence has been committed by several persons jointly, who are all in custody, the usual and proper course is to join them in the same charge. But it is not necessary to do so, and if there is any reason for indicting them separately that course may be adopted. For instance, in the case of Reg. *v.* Gungadoss and others (1st Mad. Sess. 1867), where a murder had been committed by several prisoners jointly, one of them was indicted separately, because the principal witness against him was the wife of one of the other prisoners, whose evidence would have been inadmissible if he had been indicted along with her husband.

Any number of persons may be joined in the same indictment

provided they are charged in separate counts with separate offences, for each count is considered as a separate indictment.

"But it seems that to warrant such a joinder in the same indictment the offences must be of the same nature, and such as will admit of the same plea and judgment." (Stark. Pl. 41.)

Where such is the case, it is obviously more convenient to join all the prisoners than to have the same evidence gone over again in each case. Where the facts of each case are wholly unconnected with each other, the proper course is to apply to the Court to quash the indictment. (Rex. *v.* Kingston, 8 East, 46.) In a case, where two prisoners were charged, each in a diffierent count, the first with committing perjury, and the second with suborning him to commit the same perjury, Sir Adam Bittleston refused to quash the indictment, or to arrest judgment after conviction. Reg. *v.* Gungammah, 3rd Madras Sessions, 1860.) See, however, note to Forms of Indictment No. 17.

Similarly, under the Cr. P.C., s. 458 and Act X of 1875, s. 23, "when more persons than one are accused of the same offence, or of different offences, committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of or attempt to commit such offence, they may be charged and tried together or separately as the Court thinks proper."

II. Demurrer.

The word *demurrer* is derived from the Latin verb *demorari*, and implied that the party demurring would wait for the judgment of the Court whether the case made out against him was one which he was bound to answer. A demurrer admits the facts alleged in the previous pleading, but alleges that those facts do not constitute a case upon which judgment could be given against him. For instance, supposing an indictment for grievous hurt to disclose the fact that the injury had been inflicted by the defendant while resisting an attempt to rob him, the defendant might demur, admitting the facts, but alleging that under s. 103 he was justified in the violence he used.

Demurrers are not very common in criminal law, because where they are necessary they are useless, and where they are unnecessary they are very dangerous. The ample powers of amendment now possessed by all Criminal Courts (*ante* p. 423) would make a demurrer amount simply to an invitation to the Judge to amend the charge.

On the other hand, a demurrer is a very dangerous mode of taking a legal objection, since, if overruled, it is often conclusive upon the case. Formerly, it was supposed that in cases of felony a prisoner might demur in law, and then try the issue in fact if his demurrer was decided against him. But this doctrine was denied in the case of Reg. *v.* Faderman, (1 Den. C.C. 565. See Reg. *v.* Mulcahy, 3 L.R. H.L. 323,) where the Court held that judgment against a prisoner on general demurrer must be final, since a general demurrer admits all the material facts of the case, though in the case of a special demurrer, which is usually called a demurrer in abatement, it might be otherwise. In a former case Reg. *v.* Birmingham Railway, (3 Q.B.

223) the Court granted leave to plead after a demurrer. But there the indictment was against a corporation, and the demurrer was on the special ground that a corporation was not indictable.

In a case, where the indictment was for obtaining money by false pretences, a demurrer, which was styled "a special demurrer in abatement," was put in, stating various legal objections to the sufficiency of the statements in the indictment. The demurrer was overruled, upon which the Crown pressed for judgment. Scotland, C.J. allowed the prisoner to plead over, observing that the case in the 3 Q.B. showed that the Court had the power to do so, that both in that case and the present the demurrer was undoubtedly a general demurrer, but that considering the arguments advanced it could not be considered to be a substantial demurrer, in which all the facts of the case were advisedly admitted. The permission to plead over was, however, granted with reference to the special circumstances of the case, and was not to be taken as laying down any rule applicable generally to misdemeanours. (Reg. *v.* Gnaniah Chetty, 2nd Madras Sessions, 30th April, 1862.)

The Criminal Procedure Code contains no provision for trying a question of law apart from the facts, and only speaks of a claim to be tried (ss. 218, 237), which seems to be equivalent to the English plea of not guilty, putting all the facts in issue, since it is to be followed at once by the production of the evidence for the prosecution. The same course is also laid down by Act X of 1875, Chap. IV. It will probably be held that demurrers are now abolished.

III. Pleas.

1. *Want of Jurisdiction.*

Pleas to the jurisdiction seldom arise under English law, since the same objection may be taken under the general issue, or by demurrer, arrest of judgment, or writ of error. (Arch. 111.) But, according to Mofussil practice, a party who denies the jurisdiction of the Court to try him must allege the reason of his exemption specially, and loses the advantage of it if he submits to take his trial.

Judgment against the prisoner on a plea to the jurisdiction is not conclusive, but merely compels him to answer to the charge. (Stark. P.L. 292.)

The High Courts have by their Letters Patent, s. 21, and by virtue of the charters previously in force, criminal jurisdiction over all crimes committed within their local limits. They had till recently exclusive jurisdiction over all crimes committed by European British subjects within their respective Governments, or dependent thereon, or within the dominions of allied Native Princes. (See *ante* p. 3.) Offences committed by European British subjects, which would otherwise be only punishable by a Magistrate, are made expressly punishable by the High Courts under Acts XVIII of 1859 and XXII of 1870. (4 Mad. H.C. Appx. 23.) They have also an Admiralty jurisdiction. (See *ante* p. 10.)

The Criminal Procedure Code, Chap. VII, has materially altered the privilege formerly possessed by European British subjects of being

only tried by the High Court. It commences by supplying a definition of the term "European British subject," which is declared to mean,

"(1) All subjects of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian colonies or possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal."

"(2) The children and grand-children of any such person by legitimate descent." (s. 71.)

Any Magistrate, who is in other respects authorized to do so, may entertain a complaint against a European British subject and issue process to compel his appearance, but such process can only be made returnable before a Magistrate who is himself a European British subject, a Magistrate of the first class, and a Justice of the Peace. (ss. 72, 73.) Such Magistrate may then, if the offence charged is a Magistrate's case, proceed to try it, and, on conviction, may pass any sentence warranted by law, not exceeding three months' imprisonment, or fine up to Rs. 1,000, or both. (s. 74.) If he considers that this punishment would be inadequate, and if the offence is not punishable with death or transportation for life, he shall commit the accused to the Court of Session; if punishable with death or transportation for life, he shall commit to the High Court. (s. 75.) The Sessions Judge, if himself a European British subject (s. 72), may, on conviction, pass any sentence warranted by law, not exceeding one year's imprisonment, or fine, or both. If he considers this sentence inadequate, he must transfer the case to the High Court. (s. 76).

The privileges of British subjects have lately given rise both to decisions and to legislation in consequence of the passing of several Acts of the local Legislatures. Many of these Acts created new offences punishable by Magistrates in the Mofussil or in the Presidency Towns. The Indian Councils' Act (24 & 25 Vict. c. 67, s. 42) provides that the Governor in Council "shall not have the power of making any Laws or Regulations which shall in any way affect any of the provisions of this Act or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency." Further, Act 24 & 25 Vict. c. 104, which constituted the High Courts, expressly provided (s. 9) that they should only be subject to the legislative power of the Governor-General of India in Council. Accordingly, when a European British subject was convicted under a local Act by a Magistrate in the Mofussil, the legality of the conviction, that is the competency of the local legislature to authorize his conviction, was questioned. The High Court of Bombay decided that it had exclusive jurisdiction over British born subjects, and, therefore, that the local Act infringed upon the authority of an Act of Parliament, and was *pro tanto* invalid. (Reg. *v.* Reay, 7 Bomb. C.C. 6.) A similar decision was arrived at in Madras, but under different circumstances. An Imperial Act XXIV of 1859, s. 48, renders some petty offences punishable by a Magistrate. Madras Act V of 1865 expressly provides that a European British subject may be convicted of such offences by a Magistrate, and lays down the procedure. A conviction by a Mofussil Magistrate of a British subject was set aside. The Court held that under the Imperial Act the Magistrate had no jurisdiction to convict, none having been expressly given.

By implication, though they refrained from saying so, they held that this defect was not cured by the Madras Act, which was for that purpose invalid. (5 Mad. H.C. Rul. 25.) Subsequently, the very same man was brought before the same Magistrate, charged under the same section. This time the Magistrate committed him for trial to the High Court. The committal also was quashed. The Court held, that as the Act under which he was charged was subsequent to Act XVIII of 1859 the Magistrate had no jurisdiction to commit him. (Reg. *v.* McMahon, Ruling of Mad. H.C. Crown Side, 8th June, 1870.) The result was, that Mr. McMahon and others similarly situated had for some time the enviable privilege of being drunk and disorderly with perfect impunity. Now, however, Act XXII of 1870 has by s. 1 given retrospective validity to all Acts of the Local Legislatures which had made European British subjects liable to conviction, and by s. 2 it applies to European British subjects all Imperial Acts which give a summary jurisdiction to the Magistracy. This Act which only gives validity to past legislation is supplemented by the Imperial Act 34 & 35 Vict. c. 34. Section 1 provides that "no law or regulation heretofore made or hereafter to be made by any Governor or Lieut-Governor in Council in India in manner prescribed by the Indian Councils' Act shall be invalid only by reason that it confers on Magistrates, being Justices of the Peace, the same jurisdiction over European British subjects as such Governor, &c., by regulation made as aforesaid could have lawfully conferred, or could lawfully on Magistrates in the exercise of authority over natives in the like cases." Finally by Act X of 1875, s. 25, where any Magistrate irregularly commits to the High Court a person whom he erroneously supposed he was authorized to commit, the High Court may either accept the commitment, if the accused was not prejudiced thereby, and the jurisdiction of the committing officer was not objected to at the time, or it may quash the commitment and direct a fresh enquiry by a competent Magistrate.

The High Courts are also, by s. 23 of the Letters Patent, given an extraordinary criminal jurisdiction over all offences committed within the limits of their appellate jurisdiction, on charges preferred by the Advocate-General, or by any Magistrate or other officer, specially empowered by the Government in that behalf.

The jurisdiction of the Mofussil Courts, with the single exception of the admiralty jurisdiction which they have recently acquired (see *ante* p. 8), depends upon the offence having been committed within their local limits. (Criminal Procedure Code, s. 63.) For this purpose, however, the offence is considered as having been committed, either where the act was done or where the consequence ensued. (Cr. P.C, s. 65; Act XVII of 1862, s. 31.) Therefore, if a wound was given in one zillah, of which the sufferer died in another zillah, the offender might be tried in either. So, a person who posts a libel may be tried either in the district in which he posted it, (R. *v.* Burdett, 4 B. & A. 143) or in the district where, in consequence of the posting, it was received and read. (R. *v.* Johnson, 7 East, 65; 1 R. C.C.C.R. 34.)

Where the prisoner was charged with having at Calcutta abetted the waging of war against the Queen, and was tried and convicted at

Patna, the conviction was affirmed, and the jurisdiction of the Patna Court upheld on two grounds; first, because he was a member of a conspiracy, in pursuance of which certain illegal acts were done in Patna by others, and such acts, being in furtherance of the common purpose, were his acts; secondly, because the prisoner had sent money by hundis from Calcutta to Patna, and until the money reached its destination the sending continued on the part of the prisoner, and was, therefore, a sending of the money within the Patna district. (Reg. *v.* Amir Khan, 9 B.L.R. 36.)

"When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be enquired into and tried, either in the district in which it happened, or in the district in which the offence with which it was so connected happened." (Cr. P.C., s. 66.) Therefore, abettors might be tried either in the district in which they abetted the offence, or in that where it was committed. (Ibid. *illus. (a.)*)

Receivers may be tried in any district in which they have had possession of the property, or in which the theft may be tried. (Cr. P.C., s. 66, *illus. (b)*; Act XVIII of 1862, s. 32.) But this section does not give jurisdiction over the subject of a foreign State, who received the property out of British India and who is afterwards found in possession of it within British India. (4 Bomb. H.C. Cr. 38.) So where the offence is a continuing one, as for instance the theft of property which is carried into several districts successively, the offender may be tried in any district in which he continues the offence. (Cr. P.C., s. 67, *illus. f.*) But this assumes that there was jurisdiction over the offence where it originated, therefore where the prisoner stole property in a foreign country, and carried it into India, it was held that the Indian Court had no jurisdiction. (1 Mad. L.R. 171.)

The offence of concealing or confining a person who has been kidnapped or abducted (s. 368) may be tried either in the district where the confinement or concealment took place, or in that where the kidnapping or abduction was committed. (Crim. P.C., s. 56, *illus. (c.)*)

Persons indicted under s. 424 of the Penal Code may be tried by the High Court if the property shall have been concealed or removed in any place within the local limits of such Court, or shall have been removed from any place within such local limits. (Act XVIII of 1862, s. 33.)

"When it is uncertain in which of several districts an offence was committed; or where an offence is committed, partly in one district and partly in another; or where the offence is a continuing one, and continues to be committed in more districts than one; or where it consists of several acts done in different districts, it may be enquired into and tried in any one of any such districts." (Cr. P.C., s. 67; Act XVIII of 1862, ss. 29, 31, 34.)

Act XVIII of 1862, s. 35, provides that a person, "accused of any offence alleged to have been committed on a journey or on any voyage in British India," may be tried in the High Court, "if any part of the journey or voyage shall have been performed within the local limits of the jurisdiction of such Court." In a case before the Madras High Court, two Railway guards were indicted under 27 of the Railway Act XVIII of 1854. It appeared that on a journey up to Madras, and some considerable distance from it, they were dis-

covered to be in a state of intoxication and were both removed from the train, another guard being placed in charge. One of the prisoners remained that night at the station where he had been taken out. The other prisoner, as the train was moving off, broke away from the peon in whose custody he was, jumped into the train, and so was taken on to Madras. They were convicted at the Sessions, but on a special case reserved by Bittleston, J., it was held that the Court had no jurisdiction to try them. They were East Indians, and s. 35 did not apply, the journey upon which the offence was committed having, in the case of each, terminated beyond the limits of the High Court. (Reg. *v.* Malony, 1 Mad. H.C. 193.)

A similar decision was given in Bengal under s. 67 of the Cr. P.C. 1872. Under *illus.* (*a*) it is stated that "an offence committed on a journey or voyage may be enquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing in respect of which the offence was committed, passed in the course of that journey or voyage." Two persons were going by rail from Bombay to Calcutta. The offence was committed by one against the other before reaching Allahabad. At that town both stopped, and afterwards each proceeded to Calcutta by different trains, the accused after one day's stay, and the prosecutrix after two days. It was held that there was no jurisdiction in Calcutta, and that to bring the case within the section the journey must be continuous from one terminus to another, regard being had for the purpose of estimating the continuity to all the ordinary incidents affecting journeys of the particular kind which may be under consideration. (13 B.L.R. Appx. 4.)

Murder as a thug, dacoity, and dacoity with murder, may be tried where the accused is apprehended, or in any other district where he might be tried. (Cr. P.C. 68.)

See, also, as to the powers of Government, and of the High Court to direct trials to take place in any particular district, Cr. P.C. ss. 63-64.

2. *Not Guilty.*

The plea of Not Guilty throws upon the prosecution the burthen of proving everything that is necessary to make out the crime charged. Where a *primâ facie* case has been made out the person may either produce evidence to disprove it or to justify it. For instance, a man charged with an assault may either show that he never committed the offence, or that he used the violence imputed to him in the exercise of his duty. Under this plea all objections may be taken, which show that the acts proved do not constitute the legal definition of a crime.

Where a prisoner refuses to plead, a plea of Not Guilty is entered for him, and the trial proceeds in all respects as if he had pleaded. (Cr. P.C., s. 238; Act X of 1875, s. 30.)

3 & 4. *Previous Acquittal* or *Conviction.*

It is a common maxim that no one should be twice vexed for the same cause. But this is by no means literally true. Nor would it be

at all more correct to say that no one ought to be twice tried for the same cause. A more cumbrous but more accurate statement of the rule would be as follows:—"Where a person has been put upon his trial, under circumstances, which would permit of a legal conviction for the offence with which he is charged, the sentence, whether of acquittal or conviction, is conclusive until it is reversed, and is a bar to any further prosecution on the same charge, or upon any other charge which would be established by the same evidence as that upon which the former prosecution was based."

Hence, in the first place, no proceedings short of an actual trial can be pleaded in bar to a subsequent prosecution. Therefore, if a Bill is preferred to the Grand Jury, who throw it out, this cannot be pleaded afterwards as an acquittal. (2 Hale, 246). And so it would be if a case were investigated by a Magistrate with a view to a committal and he refused to commit (1 W.R.C.L. 11; Madras Rulings, 1865, on Cr., P.C. s. 36; 4 B.A. Cr. 1), or dismissed the complaint under s. 269 (now 298) of the Crim. Pro. C. for want of prosecution. (4 Mad. H.C. Appx. 8.) Nor is the pendency of any criminal proceeding, which has not yet reached a decision, a bar to any other proceeding for the same offence, either in the same Court or in a different Court. (Bishop, § 836.)

In the second place, the circumstances must be such as would permit of a legal conviction. And, therefore, judgment in favor of the prisoner upon demurrer is no sufficient acquittal, since this assumes that upon the indictment no lawful conviction could have followed. In such a case Rolfe, B. said,

"The ground of the judgment on the demurrer being in favor of the prisoner was, that the former indictment did not charge any felony. The prisoner was only discharged of the premises in that indictment specified, and that is no discharge from this indictment which does charge a felony." (Reg. *v.* Richmond, 1 C. & K. 241.)

So, where the indictment is so completely bad in substance that a conviction, had it been obtained, must have been reversed, an acquittal will be no bar to a fresh indictment, even though the acquittal was upon the merits and not upon the ground of the flaw in the charge. (Vaux case, 4 Co. Rep. 45.) Because, whatever the tribunal might imagine that it was trying, it could try nothing but what was charged, and, therefore, the prisoner could be acquitted of nothing else. Hence an acquittal of that which was no offence could be no bar to a trial for that which was an offence. Where, however, the prisoner has been found guilty upon a bad indictment, if judgment has followed, the conviction, till it is reversed, is a bar to a subsequent indictment. But if there has been no judgment, but merely a verdict upon which no sentence has followed, this is no bar. (Ibid.) Where the Crown desires to escape from an unsustainable conviction, if the trial were held in the High Court the course would be for the prosecutor to enter a *nolle prosequi* before judgment, or after sentence he might be allowed to bring error for any defect apparent upon the record. (Bishop, § 863.) But since Act X of 1875, s. 146, it would probably be held that a *nolle prosequi* could not be entered after verdict.

A fortiori, a trial before a tribunal which had no jurisdiction over the person, or over the offence, could not be pleaded in bar to a subsequent prosecution. (2 W.R.C.C. 10.) For instance, if a Sessions

Judge were to try a British subject who had pleaded to the jurisdiction, or if a Magistrate were to convict on a charge of rape. The American Courts have held that a conviction before a Court that had no jurisdiction was a mere nullity, and need not even be set aside before a subsequent prosecution is brought. (Bishop, § 866.) But if the prisoner was actually suffering punishment under the erroneous conviction, I think it would be necessary to remove it before further proceedings could be had. (See Bishop, § 863.)

Thirdly, nothing short of a sentence, either of acquittal or conviction, operates as a bar to future proceedings. Therefore, if after the commencement of the trial it is prematurely terminated, as, for instance, in consequence of the illness of the Judge or one of the Jury, such a termination cannot be pleaded afterwards as an acquittal. And it has now been ruled, after some conflicting opinions, that the Judge has a right to put a stop to the proceedings where he sees that they cannot produce any legitimate result, or that justice would be thwarted by their continuance. In Windsor *v.* the Queen (1 L.R.Q.B. 289, 390) it was ruled, affirming Reg. *v.* Charlesworth (31 L.J.M.C. 25; 1 B. & S. 460), that where a trial was proceeding and the Judge discharged the jury from giving any verdict, this state of things was not pleadable in bar to a subsequent indictment. In Windsor's case the jury was discharged because they could not agree. In the case of Charlesworth the Judge discharged the jury because the principal witness refused to answer. The Court was divided in opinion as to whether the Judge acted rightly or wrongly in so doing; they were clear that the Judge ought to postpone the trial if the failure of evidence was the act of the prisoner, or something in which he concurred or co-operated. They were equally of opinion that he ought not to postpone it, merely to allow the Crown to produce further evidence. In this country, however, such a power is expressly given (Crim. Pro. C., ss. 208 & 264, and see s. 282, and Act X of 1875, s. 66), though it should be cautiously exercised. They were in doubt whether in the particular case he should have postponed. But they were unanimous that, whether he had been right or wrong, the trial so ended by his act was not an acquittal.

When, during the course of a trial, the Crown for any reason sees fit to abandon the prosecution, the defendant has a right to insist upon an acquittal being entered up. (1 R.C.C. Circ. 19.) It has been ruled in America that "if this is not done he may still claim his discharge, and he is not to be brought again in jeopardy for the same offence." (Bishop, § 858.) But I do not see how such a proceeding could be pleaded as an acquittal, and unless it is an acquittal it cannot be pleaded at all. Under Act X of 1875, s. 146, the Advocate-General may, at any stage of the proceeding before verdict, enter a *nolle prosequi*, but a discharge under it does not amount to an acquittal. A withdrawal however from a private prosecution by the injured person under s. 151 of the same Act does operate as an acquittal.

Fourthly, where a final sentence has been passed under circumstances which would have warranted a conviction, it is conclusive until reversed. In England there is no process by which a new trial can be had in a case of felony (Reg. *v.* Bertrand, 1 L.R.P.C. 520;

Reg. *v.* Murphy, 2 Ibid. 35, 535, overruling Reg. *v.* Scaife, 17 Q.B., 238; see, however, the doubt expressed in Reg. *v.* Martin, 1 L.R. C.C. 378), though it is admissible in certain cases where the offence is only a misdemeanour, nor by which a sentence of acquittal can be reversed. But under ss. 272-288, 297-299 of the Cr. P.C. this may be done by the High Court. In one case (1 R.C. & C.C.R. 35, 41-43) Sir B. Peacock, C.J. said,

"If, in a case of child murder, the Judge were to say it is not necessary to try whether death was done by an act done with the intention of causing death, because if it was so caused the prisoner was not guilty of murder, I find that the child was under the age of six months, and, therefore, acquit the prisoner; in such a case there would be no finding on the facts, and the Court, as a Court of Revision, would merely set aside the acquittal and order a new trial. Again, suppose a Magistrate, in a case triable by him, should convict of an offence, and the Session Judge on appeal should, without going into the facts, reverse the decision upon a point of law and order the prisoner to be discharged, stating that, assuming the facts to be as found by the Magistrate, the prisoner was not guilty of the offence, this Court, if the Judge were wrong in point of law, could, as a Court of Revision, reverse his decision and direct him to try the appeal upon its merits. (See a case of the sort, 4 R.J. & P. 417.)

"If a Judge, on appeal, should uphold the finding of a Magistrate on the facts and reverse his decision in point of law, and order the prisoner to be discharged, then, as the acquittal would be merely upon a point of law, this Court, as a Court of Revision, might reverse the Judgment of acquittal, and order the sentence of the Magistrate to stand." (Acc. 4 Mad. H.C. Rul. 70; 5 Mad. H.C. Rul. 10. See also 1 All. 139.)

"The Court may act as a Court of Revision, after it has acted as a Court of Appeal, if it finds it necessary to do so, in order to correct an order in law which cannot be set right on appeal."

"For instance, if a man should be found guilty of a murder and sentenced to seven years' transportation, if a prisoner should appeal on the facts the Court might uphold the finding of guilty of murder on appeal, and afterwards, as a Court of Revision, might set aside the sentence of seven years' transportation and pass a legal sentence for murder."

A sentence of acquittal may also be appealed against to the High Court by the Local Government, but by it only, under s. 272 (See 2 Calc. 273), but the Court will require a very strong case to be made out for the exercise of their discretion. (7 Mad. H.C. 339; 7 N.W.P. 196.)

As a Court of Revision the Court cannot reverse or set aside the finding of a jury, unless it is of opinion that the jury was misdirected by the Judge. In that case it may set aside the verdict and direct a new trial if it think fit to do so. (Cr. P.C., s. 299.)

But if the Judge disagrees with the verdict of the jury, or of the majority of the jury, he may submit the case to the High Court, which shall deal with the case as an appeal, but it may convict the accused on the facts, and if it does so, shall pass such sentence as might have been passed by the Sessions Court. (Ibid., s. 263.)

The powers given by this section of reversing a verdict should only be exercised when the Court is of opinion that the verdict is clearly and undoubtedly wrong. (13 B.L.R. Appx. 19; 1 Bomb. L.R. 10.) But where the jury acquitted a prisoner on the plea of unsoundness of mind, the High Court on a reference under s. 263 convicted the prisoner, being of opinion that there was absolutely nothing on the facts from which any reasonable person could find

in favour of such a defence, (Ibid. 20) and similarly where the jury had acquitted a prisoner who had made a full confession of guilt. (11 Bomb. H.C. 137.)

As to the circumstances under which an appeal to Her Majesty in Council should be allowed, see 10 Bomb. H.C. 75.

Lastly, the acquittal must be upon substantially the same charge. This is tested by considering whether the evidence necessary to prove the second indictment could have procured a legal conviction upon the first. (Arch. 120.) Therefore, an acquittal on an indictment for murder will bar a subsequent indictment for culpable homicide not amounting to murder, since it would have been competent to acquit of the grave offence and to convict of the minor. (Ibid. 121.) So, a person acquitted of a burglary or robbery cannot afterwards be indicted for an attempt to commit burglary or an assault with intent to rob. Nor can a person who has been acquitted of an assault under s. 352 be tried again for causing hurt. (7 B.L.R. Appx. 25.) Nor can a person acquitted of a breach of trust be tried upon the same fact alleged to be a theft or criminal misappropriation, or *vice versâ*. For in all these cases if the facts set up in the second indictment had been proved in the first a conviction would have resulted. (*Ante* p. 423.) And similarly a summary conviction under a statute for injuring a person by negligent conduct on a highway was held to be an answer to an indictment for the same act treated as an assault. (Wemyss *v.* Hopkins, 10 L.R.Q.B. 378.)

So, where a prisoner was convicted upon one indictment under s. 50 of Act XVII of 1854 for fraudulently secreting a post-letter, and then was convicted upon a second indictment under the same section for fraudulently making away with the same letter, the first conviction was held to be a bar to the second indictment. Scotland, C.J. said,

"In the present case the prisoner might properly have been charged in the first instance with both the criminal acts of fraudulently secreting and making away with the letter; and although either act is punishable under the section as an offence without any evidence of the other, still, as it appears that both acts were connected and formed substantially a part of one and the same criminal transaction, and the evidence with reference to such acts was as necessary and material on the first charge as it was on the second, the prisoner must be considered to have been tried and in peril in respect of the whole transaction as one offence on the first charge. The evidence as to his making away with the letter was properly a part of the case in support of the first charge, and the strongest proof of it. There was, in fact, no part of the evidence upon which the second conviction took place which was not properly evidenced on the first charge." (1 Mad. H.C. 83.)

But an acquittal on a charge of breaking and entering a house, having made preparation for causing hurt to any person, would be no bar to an indictment for breaking and entering the same house with intent to steal. For the same evidence which would ensure conviction on the second indictment must result in an acquittal upon the first, as the offences are distinct. (ss. 457, 458. See 2 Leach, 716.)

So, a man who has broken into a house and stolen goods therein, if he be indicted for the theft and acquitted, may afterwards be indicted

for the house-breaking and convicted, or *vice versâ*. (2 Hale, P.C. 245.) And a conviction for an assault is no bar to an indictment for manslaughter, if death subsequently follows from the effects of the assault. (Reg. *v.* Morris, 1 L.R.C.C. 90.) In this case the evidence adduced as proof of the assault is only part of the evidence necessary to convict of the culpable homicide. And where a man had forged two puttahs for different pieces of land and was indicted for the forgery of one puttah and acquitted, it was held that he might afterwards be indicted for the forgery of the second puttah; although the second puttah had been put in evidence on the former trial, and evidence had been given indiscriminately as to both documents. (3 R.C.C.C.R. 11.) It is evident in the last case that all evidence given as to the second puttah was irrelevant upon the former trial, except so far as it went to show that the *first* puttah was a forgery.

In a case in the N.W. Provinces the following facts appeared. Five prisoners were tried by a Deputy Magistrate for grievous hurt, three were acquitted and two were convicted. These appealed, and the result was that the High Court quashed the conviction, and ordered a new trial. Nothing was said as to the three who had not appealed. Upon the new proceedings all five were committed to the Session Court on a charge of attempt to murder, and convicted. On appeal, it was held that the three could not plead the former acquittal, as they were convicted on a charge over which the Deputy Magistrate had no jurisdiction. (7 N.W.P. 371.)

Similar provisions are contained in the Cr. P.C., s. 460, and in Act X of 1875, s. 117.

"A person who has once been tried for an offence, and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again on the same facts for the same offence, nor for any other offence for which a different charge from the one made against him might have been made under s. 455, or for which he might have been convicted under s. 456. (*Ante* p. 423.)

"A person, convicted or acquitted of any offence, may be afterwards tried for any offence for which a separate charge might have been made against him on the former trial under s. 454, para. 1. (See it, *ante* p. 38.)

"A person acquitted or convicted of any offence in respect of any act causing consequences which, together with such act, constituted a different offence from that for which such person was acquitted or convicted, may be afterwards tried for such last-mentioned offence if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted.

"A person acquitted or convicted of any offence in respect of any facts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence which he may have committed in respect of the same facts, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged."

Illustrations.

"(*a*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged upon the same facts either with theft as a servant, with theft simply, or with criminal breach of trust.

"(*b*) A is tried upon a charge of murder and acquitted. There is no charge of robbery, but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be tried for robbery.

"(*c*) A is tried for an assault and convicted. The person afterwards dies. A may be tried again for culpable homicide.

"(*e*) A is tried before the Court of Sessions and convicted of the culpable homicide of B. A may not afterwards be tried for the murder of B on the same facts.

"(*f*) A is charged by a Magistrate of the first class with, and convicted by him of voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within para. 3.

"(*g*) A is tried by a Magistrate of the second class with, and convicted by him of theft of property from the person of B. A may subsequently be charged with and tried for robberry on the same facts.

"(*h*) A, B, and C are charged by a Magistrate of the first class with, and convicted by him of robbing D. A, B, and C may afterwards be charged with and tried for dacoity on the same facts."

The last clause of the above section, and the illustrations (*g*) and (*h*) which explain it, are no doubt strictly sound in principle, but would work considerable injustice unless supplemented by other rules. It is evident in *illus.* (*g*) that the theft which is the subject of the first conviction, is the very same theft which is the largest ingredient in the crime which is the subject of the second conviction. So, in *illus.* (*h*) the same robbery which forms the whole of the crime charged in the first trial, is the principal part of the crime charged in the second trial. Suppose, then, that in each pair of cases the presiding officer inflicted the maximum punishment, it is plain that a single act of theft or robbery would have received its full penalty twice over. Such injustice would be prevented by providing that where the same set of facts constituted different crimes which fell under different jurisdictions, the offender should only be tried by the Court which could take cognizance of the graver offence; or that in such cases as are described in *illus.* (*g*) and (*h*) the punishment inflicted by the second Court should always run concurrently with that inflicted by the inferior tribunal.

"In any plea of *autrefois acquit* or *autrefois convict*, it shall be sufficient for the person accused to say that he has been lawfully acquitted, or convicted (as the case may be) of the offence charged in the indictment." (Act XVIII of 1862, s. 43.)

The proof of the issue lies upon the defendant. Under the Cr. P. C., s. 326, and under Act X of 1875, s. 119, an extract certified by the officer having the charge of the Records to be a copy of the charge, finding, and sentence, is the mode laid down for proving an acquittal or conviction. Oral evidence is admissible to show that the two

indictments related to the same charge, as, for instance, that the house said to be broken, the property alleged to have been stolen, &c., were the same in each case. Some evidence is also necessary to identify the person now under trial with the person who was formerly indicted.

Where the plea is found against the defendant, the rule of English law was, that if the charge was one of treason or felony he should be allowed to plead over; but if the indictment was for a misdemeanour, judgment was passed at once for the Crown. (Rex. *v.* Taylor, 3 B. & C. 512.) This distinction arose in days when every felony was a capital crime, and seems quite absurd in the present age when one class of offences is punished as heavily as the other. As the difference between felonies and misdemeanours is now abolished, the Courts will probably take a common sense view of the matter, and allow the defendant to plead to the merits in every case. In the Mofussil, this is undoubtedly the course which would be pursued.

FORMS OF INDICTMENT.

The following forms are drawn upon the model of those contained in the Criminal Procedure Code, and are intended for the use of the Mofussil Courts.

I have in many cases made the indictment more specific in its statement of the offence than the corresponding form given in the Code. I cannot imagine that the legislature intended that the charge should convey no information whatever to judge, jury, or prisoners, as would certainly be the case if it merely stated that on a certain day A committed theft. Compare the form in Sched. III, with Cr. P. C., ss. 440 & 441, *illus. (a)*

I have also referred to those enactments which govern indictments in the High Court, partly to facilitate reference by High Court practitioners, and partly as furnishing a guide to practitioners in the Mofussil, in cases not otherwise provided for.

(*No.* 1.) *Indictment against the abetter of murder, where the principal is charged in the same indictment.*

That he the said C D on or about the day of at abetted the commission of the said murder by the said A B which was committed in consequence of the abetment, and that he has thereby committed an offence punishable under ss. 109 & 302 of the Indian Penal Code, and within the cognizance of the (*Style of the Court*).

Upon conviction of an abettor his punishment depends upon the penalty attaching to the principal offence charged, and also upon whether the offence was or was not committed in consequence of the abetment, or a different offence was committed. Therefore, both the principal section must be mentioned, and the particular section of Chapter V under which the case falls (ss. 109-113, 115-117), with the circumstances which bring it under that section. (1 W.R.C.L. 9; 2 Ibid. 1, 8.)

In England it has always been held that an indictment for conspiring to commit an offence need not charge that offence with the same particularity necessary in an indictment for the offence itself.

(Lathan *v.* the Queen, 33 L.J.M.C. 197-200.) And the same rule would, I conceive, apply to charges of abetment.

(*No.* 2.) *Indictment for abetting as a separate Offence.*

That one C D (*or certain person unknown*) on the day of committed theft by dishonestly taking Rs. 50, the property of one out of his possession, without his consent, and that he the said A B abetted the said C D (*or the said persons*) in the commission of the said theft, which was committed in consequence of the said abetment, and that he has thereby committed an offence punishable under ss. 109 & 379 of the Indian Penal Code, and within, &c.

(*No.* 3.) *Indictment for abetting an offence with a different knowledge from that possessed by the persons abetted.*

That he, on or about the day of did instigate and abet one A B to assault one C D, he the said (*abettor*) then and there well knowing that the death of C D would be the probable result of such assault and intending to procure the death of the said C D by means of the assault so abetted, and that the said A B did in consequence of such abetment assault the said C D, who died in consequence of such assault, and that he the said (*abettor*) has thereby committed an offence punishable under ss. 110 & 302 of the Indian Penal Code, and within, &c.

(*No.* 4.) *Indictment for abetting one offence where a different offence is committed.*

That he, on or about the day of did instigate and abet one A B to break by night into the house of one C D, having made preparations for causing hurt to a person, and that the said A B did, in pursuance of such abetment, break into the house of the said C D and murdered one E F then being in the said house, such murder being a probable consequence of the said abetment and being committed under the influence of the instigation aforesaid, and that he the said (*abettor*) has thereby committed an offence punishable under ss. 111 & 302 of the Indian Penal Code, and within, &c.

(*No.* 5.) *Indictment for abetting an offence which is not committed.*

That he, on or about the day of did instigate and abet one C D, then being a Village Moonsiff in to take a gratification other than his legal remuneration as a reward for showing favor to him the said (*abettor*) in the exercise of his official functions, that is to say, in O. S. 1 of 1861 then pending before him the said C D, and that he has thereby committed an offence punishable under ss. 116 & 161 of the Indian Penal Code, and within, &c.

(*No.* 6.) *Indictment against a Public Servant for concealing a design to commit an offence which it was his duty to prevent.*

That, on or about the day of A B, and certain other persons unknown, committed dacoity in the village of and that the said (*defendant*) being then and there a Police peon and, as such, a public servant, whose duty it was to prevent the said crime, being well aware of the design to commit the said offence and intending to facilitate the commission thereof, did voluntarily conceal the same and did illegally omit to inform his superior officer of such

design, and that he has thereby committed an offence punishable under ss. 119 & 391 of the Indian Penal Code, and within, &c.

Note.—The indictment ought to state such facts as will show not only that the defendant was a public servant, but, also, that he was a public servant whose duty it was *as such*, not merely as an ordinary citizen, to prevent the offence.

(*No.* 7.) *Indictment for Waging War.*

That he, on or about the day of at waged war against the Queen, and that he has thereby committed an offence punishable under s. 121 of the Indian Penal Code, and within, &c.

Note.—It is not necessary to set out the particular acts of the defendant. (Arch. 590.)

(*No.* 8.) *Indictment for attempting to over-awe a Councillor by violence.*

That he, on or about the day of at with the intention of inducing the Honorable A B, a Member of the Council of the Governor-General of India, to refrain from exercising his lawful power as such member, assaulted such member, and that he has thereby committed an offence punishable under s. 124 of the Indian Penal Code, and within, &c.

(*No.* 9.) *Indictment for attempting to seduce a Soldier from his Allegiance.*

That he, on or about the day of attempted to seduce from his allegiance to the Queen one then being a private soldier in the Regiment of Her Majesty's Madras Army, and that he has thereby committed an offence punishable under s. 131 of the Indian Penal Code, and within, &c.

(*No.* 10.) *Indictment for Joining an unlawful Assembly Armed with a Deadly Weapon.*

That he, on or about the day of at with other persons to the number of five or more, did unlawfully assemble together, *he the said being then and there armed with a deadly weapon, that is to say a gun,* and that he has thereby committed an offence punishable under s. 144 of the Indian Penal Code, and within, &c.

Note.—If the circumstance of aggravation does not exist, omit the clause in italics, and charge the offence as punishable under s. 143. See the remarks upon the indictment for dacoity under s. 391.

(*No.* 11.) *Indictment for Rioting.*

That he, on or about the day of at with other persons to the number of five or more, unlawfully assembled together at and there used force in prosecution of the common object of such assembly, viz., in resisting the lawful arrest of A B, and thereby committed the offence of rioting, and that he has thereby

committed an offence punishable under s. 147 of the Indian Penal Code, and within, &c.

The Bengal High Court has laid it down that "it is quite enough to charge the prisoners with the offence of rioting punishable under s. 147 of the Indian Penal Code," but that where "the committing officer has resolved the crime into its elementary facts in the charge, all that combined to constitute the compound offence should have been charged." (1 W.R.C.L. 10; 4 R.J. & P. 413.) The tendency of the Madras High Court is to resolve such technical terms into their elements, so as to explain to the prisoner what he is charged with. (See Note to charge of dacoity.) It is also laid down in Bengal that in indictments under s. 149, the charge should state what the common object of the unlawful assembly was. (1 R.C.C. Circ. 3, 16.)

(*No.* 12.) *Indictment for an Affray.*

That on or about the   day of   they the said A B and C D did commit an affray in the public street at   by fighting therein, and disturbing the public peace, and that they have thereby committed an offence punishable under s. 160 of the Indian Penal Code, and within, &c.

(*No.* 13.) *Indictment against a Public Servant for Accepting a Gratification.*

That he being a Public Servant, that is to say, an Inspecting Engineer in the Department of Public Works, accepted for himself from one A B a gratification, other than a legal remuneration, as a motive for his the said (*defeadant's*) procuring a certain contract for the said A B, such being an official act, and that he has thereby committed an offence punishable under s. 161 of the Indian Penal Code, and within, &c.

(*No.* 14.) *Indictment for Non-attendance in Obedience to Lawful Summons.*

That on or about the   day of   one A B, then being Zillah Judge of   and being as such Zillah Judge legally competent to issue a summons, did by his summons call upon the said (*defendant*) to appear and give his evidence at the Court House of   on   and such summons was duly served upon the said (*defendant*) who was legallybound to attend in obedience to the same, yet he intentionally omitted to attend at the said Court House, and that he has thereby committed an offence punishable under s. 174 of the Indian Penal Code, and within, &c.

(*No.* 15.) *Indictment for Disobedience to an Order promulgated by a Public Servant.*

That on the   day of   A B, then being Magistrate of   made and promulgated an order directing the Left Hand Caste to refrain from conducting a procession through the   street in the Village of   , such being an order which he was lawfully empowered to promulgate, and the said (*defendants*), well

knowing the said order, disobeyed the directions of the said A B and conducted the procession through the said street, *whereby a riot was caused in the said villages (or) whereby danger to human life and safety was caused*, and that they have thereby committed an offence punishable under s. 188 of the Indian Penal Code, and within, &c.

Note.—The indictment ought to show that the public servant was one authorized to promulgate an order, and that the order was one which he was competent to make. If no riot resulted and no danger was caused by the act of disobedience the clauses in italics should be omitted, but some averment must be inserted to show that the consequences stated in the previous clause of s. 388 have resulted from the disobedience, otherwise no offence at all has been shown.

(*No.* 16.) FALSE EVIDENCE.—*Indictment for giving False Evidence in a Suit before a District Moonsiff.*

That he, on the 1st day of May, 1861, being summoned as a witness at the final hearing in O.S. 1 of 1861, being a judicial proceeding then pending before the District Moonsiff of   and being bound by solemn affirmation to state the truth, intentionally gave false evidence by knowingly and falsely stating that he had seen one Ramasawmy sign a certain document marked A, whereas he had not seen the said Ramasawmy sign the said document, and that he has thereby committed an offence punishable under s. 193 of the Indian Penal Code, and within, &c.

Note.—The averment that he "intentionally gave false evidence" is a very material point. (2 W.R.C.L. 11.) It is not necessary to state that the point on which he perjured himself was material to the issue of the case. (Ibid, and 1 Mad. H.C. 38.) The charge ought to state what the judicial proceeding was in which the false evidence was given and even the particular stage of that proceeding. (1 B.A. Cr. 3.) But it is not necessary to describe the subject-matter of the proceeding with any minuteness. A statement that the offence was committed at the trial of a certain misdemeanour at the quarter sessions at Salop was held sufficient in England. (Reg. *v.* Dunning, 1 L.R.C.C. 290.) But the date at which, and the Court or officer before whom, the false statement was made should be set out according to the facts, so that the prisoner may be able afterwards to plead his conviction or acquittal. (7 B.L.R. Appx. 66.)

(*No.* 17.) *Indictment for False Statement in an Income Tax Return.*

That he, on the   day of   being bound by law to make a declaration as to the amount of his profits for the year 1860, which declaration the Special Commissioner of Income Tax was authorized to receive as evidence of the amount of such profits, made a return to A.B, then being Special Commissioner of Income Tax for the Town of Madras, and in such return knowingly and falsely stated that his profits for the year 1860 had been only Rupees 1,000, whereas his profits for the said year had been Rupees 10,000, the said false statement being upon a point material to the object for which the said declaration was made, and that he has thereby committed an offence punishable under ss. 199 & 193 of the Indian Penal Code, and within, &c.

Note.—The practice in the High Court is to set out the substance and as nearly as possible the words of the statement upon which perjury is assigned. Where the charge did not distinctly set forth the statement which was alleged, but it appeared that the prisoners perfectly understood on their trial what was the alleged false statement and had not been prejudiced in their defence by the defective form of the charge, the Court refused to interfere. (4 R.J. & P. 359, and see Cr. P.C., s. 443, *ante* p. 423.) But the High Court of Bengal has directed that in all committals for giving false evidence under ss. 193 to 195, the particular statements on which perjury is assigned should be invariably inserted in the charge. (1 R.C.C. Circ. 15, 16, *acc.* 7 N.W.P. 137.) And that part of the statement which is alleged to be false must be specifically pointed out. (5 R.C.C.C.R. 33; 7 B.L.R. Appx. 66.) The statement proved must, also, be substantially the same as that set out, unless the record is amended to meet the variance. (Arch. 713.) It must also be expressly alleged that the statement was known and believed to be false, or that it was not believed to be true. (See form in Cr. P.C. Sched. III.)

Where several persons give false evidence, although they give it in the same proceeding and in the very same words, the offence of each is a distinct offence and of course they cannot be charged jointly in the same Court. (7 B.L.R. Appx. 66.) Where the statement of each is part of the same transaction, so that each offence will be proved and rebutted by the same evidence, it is a common and convenient course to indict all the prisoners in the same indictment, charging each, of course, in a separate count. The Madras High Court has laid it down, however, that this course is open to abuse, as it is doubtful whether prisoners so tried together will understand that they are entitled to call one another as witnesses in their defence. The Judges, therefore, directed that the strictly legal course should, for the future, be followed. Each act of giving false evidence being a separate offence, a separate charge must necessarily be framed against each prisoner, and, in future, a separate trial must be held of each charge. (3 Mad. H.C. Appx. 32; 5 Bomb. C.C. 55; 2 N.W.P. 21.)

(*No.* 18.) *Indictment for fabricating False Evidence, and for using the same knowingly.*

That he fabricated false evidence by making in an account book a false entry, purporting to be an entry of a payment of Rs. 1,000 by one A B to one Veerasawmy, intending that such false entry should appear in evidence in a judicial proceeding, and that such false entry, so appearing in evidence, should cause any person, who in such proceeding might have to form an opinion upon the evidence, to entertain an erroneous opinion touching the fact of such payment, the same being a point material to the result of such proceeding, and that he has thereby committed an offence punishable under s. 193 of the Indian Penal Code, and within, &c.

That he, the said A.B. in O.S. 1 of 1861, being a judicial proceeding before the Civil Judge of   corruptly used the entry in the last count mentioned as genuine evidence, knowing the same to be fabricated, and that he has thereby committed an offence punishable under s. 196 & s. 193 of the Indian Penal Code, and within, &c.

(*No.* 19.) *Indictment for causing Disappearance of Evidence.*

That he, having reason to believe that an offence, that is to say murder, had been committed, did throw a certain dead body into a well, and thereby cause evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, and that he has thereby committed an offence punishable under s. 201 of the Indian Penal Code, and within, &c.

Note.—Where a prisoner is charged under this section, or under ss. 202, or 203, it is not necessary to show that any offence had been actually committed, provided he committed the act under the mistaken belief that an offence had been committed. (2 W.R.C.L. 1.)

(*No.* 20.) *Indictment for false Personation in a Suit.*

That he, on the day of falsely personated one A B in a judicial proceeding before C D, Esq., the Registrar of the High Court of Madras, and in such assumed character became security for one X, a receiver appointed by the said Court, the same being an act done in a civil suit then pending in the said High Court, and that he has thereby committed an offence punishable under s. 205 of the Indian Penal Code, and within, &c.

(*No.* 21.) *Indictment for fraudulent Transfer of Property.*

That one A B was a creditor of the said (*defendant*) and had sued him in the Moonsiff's Court of in O.S. 1 of 1861, and had obtained judgment against him for the sum of Rupees 1,000, and the said (*defendant*) intending to prevent a certain piece of land situated in the village of from being taken in execution of the said decree, fraudulently transferred the same to one C D, and that he has thereby committed an offence punishable under s. 206 of the Indian Penal Code, and within, &c.

(*No.* 22.) *Indictment for a false Claim.*

That he, on or about the day of commenced a suit in the District Moonsiff's Court of against one A B, and in the said suit falsely claimed to be the owner of certain jewels then in the possession of the said A B, with intent to injure the said A B, whereas he well knew that he was not the owner of the jewels so claimed, and that he has thereby committed an offence punishable under s. 209 of the Indian Penal Code, and within, &c.

(*No.* 23.) *Indictment for a false Charge of an Offence.*

That he, on or about the day of with intent to cause injury to one A B, appeared before the Magistrate of and there falsely charged the said A B with having stolen Rs. 50, he the said (*defendant*) at the time well knowing that A B had not stolen the said money, and that there was no just or lawful ground for such charge, and that he has thereby committed an offence punishable under s. 211 of the Indian Penal Code, and within, &c.

See 2 W.R.C.L. 2, where this form is laid down. The nature of the false charge should be stated in the finding and entered in the Calendar. (1 Bomb. H.C. 88.)

(*No.* 24.) *Indictment for Harbouring an Offender.*

That on or about the day of the crime of dacoity was committed in the village of and that he the said (*defendant*) harboured one A B, whom he, at the time he harboured him, knew (*or had reason to believe*) to be one of the offenders, with the intention of screening him from legal punishment, and that he has thereby committed an offence punishable under s. 212 of the Indian Penal Code, and within, &c.

(*No.* 25.) *Indictment for omission to apprehend, or for permitting an Escape.*

That he, being a public servant, that is to say, an Inspector of Police (*Keeper of the Jail of*) and being as such public servant legally bound to apprehend (*keep in confinement*) one A B who then was charged with the offence of robbery, intentionally omitted to apprehend the said A B (*suffered the said A B who was then in confinement in the said jail to escape from such confinement*), and that he has thereby committed an offence punishable under s. 221 of the Indian Penal Code, and within, &c.

Note.—The nature of the office held by the prisoner should be stated, so that it may appear whether the legal obligation to apprehend, or to keep in confinement, attached to it. (1 R.C.C. Circ. 19.) The names of the persons suffered to escape should be stated (Ibid.); but this is not an essential to the charge, but merely a matter of particularity for the information of the accused. The nature of the charge against the person who escaped should also be stated in charges under this section and under ss. 222 & 225, since the punishment of the public servant depends upon the extent to which justice was likely to be defeated by his breach of duty.

(*No.* 26.) *Indictment for Counterfeiting Coin.*

That he, on or about the day of counterfeited a piece of the Queen's Coin known as a Company's Rupee, and that he has thereby committed an offence punishable under s. 232 of the Indian Penal Code, and within, &c.

(*No.* 27.) *Indictment for passing off and possessing Counterfeit Coin.*

First; That he, on or about the day of having a counterfeit Coin, which was a counterfeit of a piece of the Queen's Coin known as a Company's Rupee, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's Coin, fraudulently delivered the same to one A B, and that he has thereby committed an offence punishable under s. 240 of the Indian Penal Code, and within, &c.

(*No.* 28.) *Secondly;* That he, on or about the day of delivered to one A B as genuine a counterfeit Coin, that is to say, a counterfeit Rupee, knowing the same to be counterfeit, and that he has thereby committed an offence punishable under s. 241 of the Indian penal Code, and within, &c.

In charges under s. 241, the name of the person to whom it was delivered should be stated, as required by the model from Sched. III, Cr. P. C. It is also essential that the element of *fraud* should be recognized, either by the use of the word "fraudulently" in the charge, or of the terms "as genuine" in the manner indicated in the sample form. (1 R.C.C. Circ. 20.)

(*No.* 29.) *Thirdly;* That he, on or about the day of was fraudulently in possession of counterfeit Coin, that is to say, three counterfeit Anna pieces, he, at the time when he became possessed thereof, having well known that they were counterfeit, and that he has thereby committed an offence punishable under s. 242 of the Indian Penal Code, and within, &c.

(*No.* 30.) *Indictment for Murder.*

That he, the said A B, on or about the day of at did commit culpable homicide amounting to murder, (1 W.R.C.L. 12) by causing the death of one Z by doing an act with the intention of causing the death of a human being,

(or) by doing an act with the intention of causing such bodily injury to the said Z, as he, the said A B, knew to be likely to cause the death of the said Z,

(or) by doing an act with the intention of causing bodily injury to some person, and that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death,

(or) by doing an act, knowing it to be so immediately dangerous that it must in all probability cause the death of a human being, or such bodily injury as was likely to cause the death of a human being, and committing such act without any excuse for incurring the risk of causing death or such injury as aforesaid, and that he has thereby committed an offence punishable under s. 302 of the Indian Penal Code, and within the cognizance of the (*Style of the Court.*)

Note.—The above form is sufficient without setting forth the manner in which, or the means by which, the death was caused. (Cr. P.C., s. 441. *illus.* (*e*).) Only one of the clauses commencing with (or) should be used in the same count, but if there is any doubt as to the character of the act, it is well to use different counts, stating the nature of the act differently in each. The same commencement and conclusion will be required in each count.

It is not necessary to negative the special exceptions contained in s. 300.

That he (*or they*) the said A B on or about the day of at committed murder by causing the death of C D, and that he (*or they*) has (*or have*) thereby committed an offence punish-

able under s. 302 of the Indian Penal Code, and within, &c. (1 R.C. C. Circ. 26; C.R. 33, and see *ante* p. 424.)

(No. 31.) *Indictment for Culpable Homicide.*

That he, on or about the day at committed culpable homicide not amounting to murder by causing the death of by doing an act with the intention of causing death, (or) with the intention of causing such bodily injury as was likely to cause death, (or) with the knowledge that he was likely by such acts to cause death, and that he has thereby committed an offence punishable under s. 304 of the Indian Penal Code, and within, &c.

Note.—The indictment should "state whether the act constituting the offence of culpable homicide, not amounting to murder, was done with the intention of causing death, or only with the knowledge that it was likely to cause death, as distinct penalties are provided by law for the same acts as above distinguished." (2 W.R.C.L. 8.) The words "not amounting to murder," should, also, be used. (1 Ibid. 12.)

According to English law and in the High Court under Act X of 1875, s. 22, and in other Courts under s. 457 of the Cr. P.C., separate counts for murder and culpable homicide are unnecessary, as upon an indictment for the graver offence, the jury may convict of the minor.

(No. 32.) *Indictment for causing Miscarriage.*

That he, on or about the day of voluntarily and without the consent of A B, then being a woman with child, caused the said A B to miscarry, such miscarriage not being caused in good faith for the purpose of saving the life of the said woman, and that he has thereby committed an offence punishable under s. 313 of the Indian Penal Code, and within, &c.

(No. 33.) *Indictment for causing Grievous Hurt by dangerous Weapon.*

That he, on or about the day of voluntarily caused grievous hurt to one A B by means of an instrument for shooting, that is to say a pistol, and that he has thereby committed an offence punishable under s. 326 of the Indian Penal Code, and within, &c.

Note.—It is not necessary to aver that the case did not fall under the provisions of s. 334. (Act XVIII of 1862, s. 26; Cr. P.C., s. 439.)

(No. 34.) *Indictment for causing Grievous Hurt by Negligence.*

That he, on or about the day of caused grievous hurt to one A B by doing an act, that is to say, by driving a carriage so rashly (*or negligently*) as to endanger the personal safety of others, and that he has thereby committed an offence punishable under s. 338 of the Indian Penal Code, and within, &c.

(*No.* 35.) *Indictment for Wrongful Confinement for the purpose of Compelling Restoration of Property.*

That he, on or about the day of wrongfully confined one A B, for the purpose of constraining the said A B to cause the restoration of certain jewels, before then stolen from him the said (*defendant*), and that he has thereby committed an offence punishable under s. 348 of the Indian Penal Code, and within, &c.

Note.—The name of the person wrongfully confined should be given. (1 R.C.C. Circ. 20.)

(*No.* 36.) *Indictment for an Assault.*

That he, on or about the day of assaulted one A B, the said assault not being committed on grave and sudden provocation given by A B, and that he has thereby committed an offence punishable under s. 352 of the Indian Penal Code, and within, &c.

(*No.* 37.) *Indictment for Kidnapping from Lawful Guardianship.*)

That he, on or about the day of kidnapped one A B, *being a female under the age of* 16 (*or being a person of unsound mind*) from lawful guardianship by taking her out of the keeping of her father C D without his consent, and that he has thereby committed an offence punishable under s. 363 of the Indian Penal Code, and within, &c.

(*No.* 38.) *Indictment for Abduction of a Woman.*

That he, on or about the day of abducted a certain woman named A B by inducing her by deceitful means to go from her home, knowing it to be likely that she would be seduced to illicit intercourse, and that he has thereby committed an offence punishable under s. 366 of the Indian Penal Code, and within, &c.

Note.—The particular portions of the section which fit the particular case must be selected in framing the charge. (2 W.R.C.L. 7.)

(*No.* 39.) *Indictment for Rape.*

That he, on or about the day of committed rape upon the person of one A B, and that he has thereby committed an offence punishable under s. 376 of the Indian Penal Code, and within, &c.

(*No.* 40.) *Indictment for Theft bg a Servant.*

That he, on or about the day of being the servant of one A B, did commit theft in respect of certain property then in the possession of his said master (2 W.R.C.L. 8), by dishonestly taking six spoons out of the possession of the said A B without his consent, and that he has thereby committed an offence punishable under s. 381 of the Indian Penal Code, and within, &c.

Where a completed theft is charged the goods ought to be stated. Otherwise where only an attempt to steal is alleged. (Reg. *v.* Gallagher, 34 L.J.M.C. 24; L. & C. 489.)

The definition of theft under the Penal Code does not render it necessary to state who was the owner of the property. Where, how-

ever, the person in possession from whom they were stolen was the owner it is usual to state that they were his property, and this allegation will be supported if it appear that he had only some special property in them as a bailee, a pawnee, a carrier, agent, or the like. Where the person who has such special property has an absolute right to detain them from the ultimate owner for a definite time, the ownership must be laid in him and not in the ultimate owner. Otherwise it may be laid at pleasure in either. (2 Russell, 288.) A variance between the statement as to the ownership and the evidence would in general be amended under Act X of 1875, s. 10. But such an amendment would be refused where it would tend to prejudice the prisoner in his defence upon the merits. Where the accused was charged with receiving goods from the prosecutor's wife, the prosecutor being alleged to be the owner, an amendment laying the property jointly in the prosecutor and his mother was refused. The prisoner's counsel stated that he had been instructed to put forward the defence that the prisoner had received the property innocently from the wife, and that as she could not be convicted of stealing from her husband he could not be convicted of receiving the property as stolen property from her. (6 Bomb. O.C. 76.)

If the facts proved under this indictment amount to criminal misappropriation or breach of trust, there may still be a conviction; see *ante* p.423.

As to cases where the evidence establishes several acts of theft, see Act X of 1875, s. 18, and Cr.P.C., s. 453, *ante* p. 425.

(*No.* 41.) *Indictment for Theft in a Dwelling House.*

That he on or about the day of committed theft in a building used by one C D as a human dwelling (*or for the custody of property*) by dishonestly taking one brass vessel, the property of the said C D, out of the said building without his consent, and that he has thereby committed an offence punishable under s. 380 of the Indian Penal Code, and within, &c.

(*No.* 42.) *Indictment for Extortion by putting in fear of Death.*

That he, on or about the day of did extort a promissory note for Rupees 100 from A B, having, in order to the committing of such extortion, put the said A B in fear of death, and that he has thereby committed an offence punishable under s. 386 of the Indian Penal Code, and within, &c.

(*No.* 43.) *Indictment for Highway Robbery by Night.*

That he, on or about the day of on the highway leading from A to B, and between sunset and sunrise, robbed one C D of a watch and seals, and that he has thereby committed an offence punishable under s. 392 of the Indian Penal Code, and within, &c.

Note.—The averment that the offence was committed on the high way is material. (1 W.R.C.L. 11.)

Distinct robberies committed in different houses during the same night by the same prisoners should be set out in separate charges,

and each should be tried separately. Where all the charges were united in the same indictment and tried simultaneously, the conviction was quashed and a new trial ordered. (2 R.C. & C.C.C.R. 67.)

(No. 44.) *Indictment for Dacoity with Murder.*

That on or about the day of he, *with others to the number of five or more,* committed robbery, and thereby dacoity, at the village of and that in committing such dacoity one of the said persons murdered one A B, and that he the said (*defendant*) has thereby committed an offence punishable under s. 396 of the Indian Penal Code, and within, &c.

Note.—The words in italics are said by the Bengal High Court to be redundant as being included in the term dacoity. (2 W.R.C.L. 1.) But the Madras High Court has ruled that they should be inserted, as being necessary to inform the prisoner of the charge against him. (Madras Rulings, 1864, on s. 395.) They are not contained in the form given in Sched. III of the Cr. P.C. and see Cr. P.C., s. 439, *ante* p. 422.

Where the charge is preferred under s. 397, or s. 398, the charge must mention s. 395 as well, since the former sections merely impose a minimum punishment, while the extent of the penalty is to be found in s. 395. (5 R.J. & P. 137.)

(No. 45.) *Indictment for Criminal Misappropriation.*

That he, on or about the day of dishonestly misappropriated certain jewels, knowing that such property was in the possession of one Ramasawmy, now deceased, at the time of his death, and that the same had not since been in the possession of any person legally entitled to such possession, and that he has thereby committed an offence punishable under s. 404 of the Indian Penal Code, and within, &c.

Note.—If the offence really committed should amount to a theft, the conviction will still be valid. *Ante* p. 423.

(No. 46.) *Indictment for Criminal Breach of Trust.*

That he being the clerk of John Brown, and being in such capacity entrusted with a promissory note the property of the said John Brown, committed criminal breach of trust by dishonestly converting the said note to his own use, and that he has thereby committed an offence punishable under s. 408 of the Indian Penal Code, and within, &c.

Where the defendant is a servant of a partnership, or of a Joint Stock Company not incorporated, (Reg. *v.* Frankland, 32 L.J.M.C. 69; 1 L. & C. 276,) the correct mode of framing the indictment is to state that he is the servant of one of the partners or shareholders by name, and of others, not naming them.

If the alleged breach of trust should turn out to be a theft, the defendant may still be convicted under this indictment. See *ante* p. 423.

(*No.* 47.) *Indictment for Receiving Stolen Property.*

That he, on or about the day of dishonestly received a gold bracelet, then being stolen property, knowing (*or* having reason to believe) the same to be stolen property, and that he has thereby committed an offence punishable under s. 411 of the Indian Penal Code, and within, &c.

The Bombay High Court have laid it down that a charge under this section should allege that the article found in the prisoner's possession was property stolen from A B (naming him) the owner thereof. (1. Bomb. H.C. 96.) But this specification might often be impossible, and I cannot see that it is ever necessary.

(*No.* 48.) *Indictment for Cheating.*

That he, on or about the day of cheated one Veerasawmy, by falsely pretending that a certain ornament was made of gold, and thereby deceived the said Veerasawmy, and fraudulently induced him to pay the sum of Rupees 100, *the property of the said Veerasawmy,* as the price of the said ornament, whereas the said ornament was not of gold, in consequence of which the said Veerasawmy suffered damage in his property; and that he has thereby committed an offence punishable under s. 420 of the Indian Penal Code, and within, &c.

Note.—Under English law an indictment for cheating was bad unless it set out the false pretences, and it was not sufficient merely to allege that the money was obtained from the defendant by false pretences. (Arch. 401.) Probably in Mofussil practice such particularity would not be held necessary, but it seems to me most advisable that the indictment should be as specific as possible for the protection of the prisoners. A mere allegation in the words of the Code, that A cheated B would be too vague to give any information of value to the prisoner or the Judge.

According to the practice of the High Court it is also necessary to negative the pretences by special averment (Arch. 407), but out of those limits such precision would probably not be required.

The indictment should state whose the property is, so as to negative the possibility of its being the property of the prisoner. But the omission of such a statement would be immaterial, unless the prisoner was in fact misled by it. (Act X of 1875, s. 24.) In Reg. *v.* Willans the High Court seemed to lay down, though with considerable reluctance, on the authority of English cases, that if the property was, in fact, not that of the prosecutor, as, for instance, if A by cheating B, induced him to deliver up the property of C, the offence under s. 415 would not be committed. Even supposing this view of the law to be correct, I have no doubt that any legal possession, which entitled the party cheated to retain the article as against the party cheating him, would be held to be sufficient proof of property to support an indictment. (See *ante* p. 450.)

An indictment for cheating the prosecutor of his property is proved by evidence that the article was, in fact, delivered by the prosecutor's wife, upon a permission granted by the prosecutor under the influence of the false statement. (Reg. *v.* Moseley, 31 L.J.M.C. 24; L. & C. 92.)

(*No.* 49.) *Indictment for Mischief to Cattle.*

That he, on or about the day of committed mischief by maiming a horse (or a dog of the value of fifty rupees), the property of A B, and that he has thereby committed an offence punishable under s. 429 of the Indian Penal Code, and within, &c.

Note.—Under this section value may be the essence of the offence, and would have to be alleged and proved.

(*No.* 50.) *Indictment for Lurking House-trespass by Night.*

That he, on or about the day of at committed lurking house-trespass by night in the house of and that he has thereby committed an offence punishable under s. 456 of the Indian Penal Code, and within, &c.

(*No.* 51.) *Indictment for House-breaking by night with intent to commit Theft.*

That he, on or about the day of broke into the house of one A B, after sunset and before sunrise, in order to commit theft, (or *in order to the committing of an offence punishable with imprisonment, that is to say the offence of adultery,*) and that he has thereby committed an offence punishable under s. 457 of the Indian Penal Code, and within, &c.

Note.—If theft has been committed, add a count under s. 380. Form 41, *ante* p. 450.

(*No.* 52.) *Indictment for breaking open a closed Receptacle entrusted to him.*

That he being entrusted with a closed receptacle, that is to say a box containing property, (*or which he believed to contain property,*) did, on or about the day of dishonestly break open the same, not having authority so to do, and that he has thereby committed an offence punishable under s. 462 of the Indian Penal Code, and within, &c.

(*No.* 53.) *Indictment for forging a Bill of Exchange and fraudulently using the same.*

First; That he, on or about the day of committed forgery, by making a certain false Bill of Exchange, purporting to be a valuable security, with intent to defraud, and that he has thereby committed an offence punishable under s. 467 of the Indian Penal Code, and within, &c.

Secondly; That he, on or about the day of fraudulently used the said forged Bill of Exchange as genuine knowing it to be forged, and that he has thereby committed an offence punishable under ss. 471 & 467 of the Indian Penal Code, and within, &c.

Where the forgery consists in altering a true instrument, the offence may still be described as a forgery of the whole. (*Ante* p. 367.)

It is not necessary to mention the person upon whom the forgery has been passed off, or attempted to be so. (Arch. 466.)

Where a conviction is sought under s. 467 the document must be described so as to bring it within the terms of the section, and such description is material and must be made out. So, if the prisoner is indicted for uttering a forged document, he cannot receive the enhanced punishment for uttering a document described in s. 467, unless the indictment has so charged his offence. (6 Bomb. C.C. 43.)

(No. 54.) *Indictment for Bigamy.*

That he, the said John Brown, on the day of had a wife living named Sarah Brown, (*who had been continually absent from the said John Brown for the space of* 7 *years and had not been heard of by him as being alive within that time,*) and that he, on the said day, married one Elizabeth Smith, the said last named marriage being void by reason of its taking place during the life of the said Sarah Brown, (*and that he, the said John Brown, did not before the said last named marriage inform the said Elizabeth Smith of the real state of facts connected with his said first marriage, so far as the same were within his own knowledge,*) and that he has thereby committed an offence punishable under s. 494 of the Indian Penal Code, and within, &c.

(No. 55.) *Indictment for Adultery.*

That he, on or about day of committed adultery by having sexual intercourse with one who then was and whom he knew (*or had reason to believe*) to be the wife of another man, that is to say of one without the consent or connivance of the said (*name of husband,*) such sexual intercourse not amounting to the offence of rape, and that he has thereby committed an offence punishable under s. 497 of the Indian Penal Code, and within, &c.

(No. 56.) *Indictment for enticing away a Married Woman.*

That he, on or about the day of enticed away from her husband (*or from one who then had the care of her on behalf of her husband*) a certain woman named who then was and whom he the said then knew (*or had reason to believe*) to be the wife of one with intent that she might have illicit intercourse with him the said (*or with a certain other person named*) and that he has thereby committed an offence punishable under s. 498 of the Indian Penal Code, and within, &c.

Note.—In cases of bigamy the offence is completed at the time of the second marriage, and must be tried by the Court within whose jurisdiction such second marriage took place. In cases of adultery any Court may try the offence, within whose limits any act of criminal connection took place. In cases of enticing or taking away a married woman there is an offence triable in every district into which the woman was enticed. But where she is taken out of one

district and lives with the man in another, if the trial is to be in the latter district it would be well to add a count under s. 498 for detaining her in that district. Of course, a man cannot be tried twice in the same or in different districts for different acts of the same continuous adultery, enticing, or detaining. (See *ante* p. 394.)

(*No.* 57.) *Indictment for Defamation.*

That he, on or about the day of defamed A B, by writing and publishing concerning him the following words (*here insert the defamatory matter*) and that he has thereby committed an offence punishable under s. 500 of the Indian Penal Code, and within, &c.

Note.—See as to negativing the exceptions in s. 499, Act XVIII of 1862, s. 26, and Cr. P.C., s. 439, *ante* p. 424.

(*No.* 58.) *Indictment for Criminal Intimidation.*

That he, on or about the day of criminally intimidated A B, (*by threatening to cause grievous hurt to one B C, with intent to cause the said A B to do an act which he was not legally bound to do that is, to give money to the accused*) and that he has thereby committed an offence punishable under s. 506 of the Indian Penal Code, and within, &c.

Note.—The words in italics are probably not necessary, at least in the Mofussil, but if any part of the description of the offence is set out the whole is necessary.

(*No.* 59.) *Indictment for attempting to commit House-breaking.*

That he, on or about the day of did attempt to commit house-breaking in the house of one and in such attempt did an act towards the commission of the offence, and that he has thereby committed an offence punishable under s. 511 and s. 453 of the Indian Penal Code, and within, &c.

Note.—No separate count for an attempt is necessary where the completed offence is charged. (Act X of 1875, s. 22, and Cr. P.C., s. 419, *ante* p. 419.) The indictment must specify not only s. 511 but the section of the Code under which the offence, if completed, would have been punishable, as a reference to both sections is necessary to determine the penalty. (2 W.R.C.L. 2.)

Charges of attempts must, of course, contain a correct legal description of the offence attempted, but need not state it in as much detail as a charge of actually committing the offence. For instance, a count for an attempted theft need not specify the goods which the thief attempted to steal, since that cannot always be known. (Reg. *v.* Johnson, 34 L.J.M.C. 24; L. & C. 489.) But an indictment for an attempt to cheat was held insufficient which simply stated that the prisoner "did unlawfully attempt and endeavour fraudulently, falsely and unlawfully to obtain from the A. Insurance Co. £22 10*s.*, with intent thereby then and there to cheat and defraud the said Company." (Reg. *v.* March, 1 Den. C.C. 505.) Here, not only the

indictment gave the prisoner no information as to the nature of the offence which was charged against him, but it stated nothing which, if admitted, amounted to an offence.

(*No.* 60.) *Indictment for Theft after a previous conviction.*

That he, on or about the day of committed theft by dishonestly taking one gold bangle then in the possession of one A B, out of his possession without his consent, and that he has thereby committed an offence punishable under s. 379 of the Indian Penal Code, and within, &c. And the said (*defendant*) stands further charged that he, before the committing of the said offence, that is to say, on the day of had been convicted in Calendar No. on the file of of an offence punishable under Chapter XVII of the Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night, (*describe the offence in the words used in the section under which the penalty is imposed*) which conviction is still in full force and effect, and that he is thereby liable to enhanced punishment under s. 75 of the Indian Penal Code, and within, &c.

Note.—The date of the previous conviction ought to be mentioned in the charge, since, in order to render s. 75 of the Penal Code applicable, it is necessary that the previous offence should have been committed since the 1st of January, 1862, when that Code became law. (1 R.J. & P. 562, and see *ante* p. 42.) But to carry out the above principle strictly, it would be rather necessary to state the time at which the offence was committed, than the date of the conviction.

"If the accused person has been previously convicted of any offence, and if it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted it may be added at any time before sentence is passed, but not afterwards." (Cr. P.C., s. 439.) The English practice is the same, but to avoid undue prejudice to the prisoner, he is first tried on the substantive charge then under enquiry, and, if convicted, he is then charged with and tried on the fact of the previous conviction. (Rulings of Madras High Court of 1865 on s. 75; 24 & 25 Vict. c. 96, s. 116.)

If the prisoner admits the fact of the previous conviction further trial is of course unnecessary. If he pleads not guilty to it also, then the previous conviction must be proved in the manner pointed out *ante* p. 438, and evidence must be given to identify the prisoner with the person named in the previous conviction. This is generally done by some one who was present at the first trial, or who has had the prisoner under his charge upon the former sentence. The finding that he was previously convicted must then be entered on the record, and the aggravated sentence can be passed.

ACT No. XVII of 1862.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 1st May, 1862. Repealed by Act X of 1872.)

An Act to repeal certain Regulations and Acts relating to Criminal Law and Procedure.

Preamble.

WHEREAS by Act XLV of 1860 a Penal Code has been prescribed for British India, and the said Code came into operation on the 1st day of January, 1862; and whereas by Act XXV of 1861, a Code of Procedure is provided for the Courts of Criminal Judicature not established by Royal Charter, and the said Code likewise came into operation on the first day of January, 1862, in the Presidencies of Bengal, Madras, and Bombay, and was at the same time, or has since been or hereafter may be extended to other parts of British India; and whereas it is expedient to repeal, in the manner hereinafter provided, certain Regulations and Acts relating to Criminal Law and Procedure, it is enacted as follows:—

Repeal of Regulations and Acts providing for the punishment of offences.

Exception.

1. The several Regulations and Acts set forth in the Schedule hereunto annexed, so far as they provide for the punishment of offences, shall be held to have been and are hereby repealed from the 1st day of January, 1862, in the Presidencies of Bengal, Madras,

Bombay, and in the other parts of British India in which such Regulations and Acts or any of them were in force on the said 1st day of January, 1862, except in so far as they repeal the whole or any part of any other Regulation or Act, and except as to any offence committed before the said 1st day of January, 1862.

Repeal of Regulations and Acts not repealed by last section, in places where Code of Criminal Procedure came into operation on 1st January, 1862.

2. To the extent expressed in the Schedule annexed to this Act, the Regulations and Acts set forth therein, which are not repealed by the last preceding section, shall, except in so far as they repeal the whole or any part of any other Regulation or Act, and except as to any offence committed before the said 1st day of January, 1862, be held to have been and are hereby repealed from the said date in the Presidencies of Bengal, Madras, and Bombay, and in the other parts of British India in which such Regulations and Acts or any of them were in force on the said 1st day of January, 1862, and in which the said Code of Criminal Procedure came into operation on such date.

Repeal of the same Regulations and Acts in places where the Code of Criminal Procedure did not come into operation on 1st January, 1862.

3. To the extent expressed in the Schedule annexed to the Act, the Regulations and Acts set forth therein, which are not repealed by Section 1 of this Act, and which were in force on the said 1st day of January, 1862, in any part of British India in which the said Code of Criminal Procedure did not come into operation on the said 1st day of January, 1862, shall, except in so far as they repeal the whole or any part of any other Regulation or Act, and except as to any offence committed before the date on which the said Code shall have been or shall hereafter

be extended to such part of British India, be held to have been or shall be repealed in such part of British India from the date on which the said Code shall have been or shall be so extended thereto.

Procedure and powers in the investigation and trial of offences committed before 1st January, 1862.

4. In the investigation and trial of offences committed before the said 1st day of January, 1862, the Criminal Courts of the several grades and the Officers of Police shall, after the passing of this Act, be guided by the provisions of the Code of Criminal Procedure, so far as the same can be applied, where the said Code shall be in operation at the time of such investigation or trial, and for the trial and punishment of such offences such Courts shall exercise the jurisdiction and powers vested in them under the said Code of Criminal Procedure, provided that no person convicted of any such offence shall be liable to any other punishment than that to which he would have been liable had he been convicted of such offence before the said 1st day of January, 1862, and that no such person who shall claim the same, shall be deprived of any right of appeal or reference to a Sudder Court which he would have enjoyed had the trial been held under any of the Regulations or Acts hereby repealed.

Procedure in the investigation and trial, in places to which the Code to Criminal Procedure is extended after passing of this Act, of offences committed before date of extension.

5. In any part of British India to which the Code of Criminal Procedure shall be extended after the passing of this Act, the said Code shall, subject to the provisions of the last preceding section, be followed in the investigation and trial of any offences committed before the date of such extension.

Saving of certain sentences passed for offence committed before Code of Criminal Procedure came into operation, by reason only of the procedure of that Code having been followed.

6. No sentence passed before the passing of this Act for any offence which shall have been committed before the 1st day of January, 1862, (or whenever the said Code of Criminal Procedure shall not have been extended to any place in British India on the said 1st day of January, 1862, then before the date on which the said Code shall have been extended to such place,) shall be liable to be quashed or set aside by reason only of the Procedure in the investigation or trial of any such offence having been wholly or in part the procedure provided by the said Code of Criminal Procedure.

Proviso.

Provided that, if in any such case it shall appear that the accused party has been deprived of any right of appeal or reference to a Sudder Court which he would have enjoyed had the trial been held under any of the Regulations or Acts hereby repealed, the Sudder Court or the highest Court of Criminal Jurisdiction may call for the proceedings in the case and pass such order thereon as it may deem just and proper.

Saving of certain sentences passed, &c., before passing of this Act.

7. Nothing in this Act shall affect any sentence or order passed, or any proceeding held, or any act done, previously to the passing of this Act and in accordance with any Act or Regulation repealed by this Act.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Extent of Repeal.
Act XIII of 1835	The whole.
XV of 1835	The whole.
XVIII of 1835	The whole.
XX of 1835	The whole.
VI of 1836	The whole.
XXX of 1836	The whole.
XVIII of 1837	The whole.
XXI of 1837	Section IV.
XXIII of 1837	The whole Act.
XXVII of 1837	Section XII.
XXX of 1837	The whole.
XXXIII of 1837	The whole.
XXXVII of 1837	The whole.
III of 1838	The whole.
IX of 1838	The whole.
XXVI of 1838	The whole.
II of 1839	The whole.
XVIII of 1839	The whole.
XIX of 1839	The whole.
I of 1840	The whole.
IV of 1840	The whole.
V of 1840	Sections II and III.
XI of 1840	Sections II and III.
XVII of 1841	Section II, so much as was not repealed by Act X of 1861.
XXI of 1841	The whole Act.
XXX of 1841	Section I.
XXXI of 1841	The whole.
VIII of 1842	The whole.
XVIII of 1842	The whole.
IV of 1843	The whole.
VIII of 1843	Sections XXVII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXVI, XXXVII, XLI, XLII, XLIII, LI, LIV, LV, and LVI.
XV of 1843	In so far as it relates to the powers of Deputy Magistrates or Judicial Officers.
XXIV of 1843	The whole.
III of 1844	The whole.
XIV of 1844	The whole.
II of 1845	The whole.
X of 1845	The whole.
XVIII of 1845	The whole.
XXVII of 1845	The whole.
XXX of 1845	The whole.

Reference to Regulation or Act.	Extent of Repeal.
Act VII of 1846	The whole.
X of 1847	The whole.
XX of 1847	Section IV.
I of 1848	The whole.
III of 1848	The whole.
V of 1848	The whole.
XI of 1848	The whole.
XIX of 1848	The whole.
IV of 1849	The whole.
XIV of 1849	The whole.
VII of 1850	The whole.
XIII of 1850	The whole.
XVI of 1850	The whole.
XXXVIII of 1850	The whole.
IV of 1851	The whole.
XVI of 1851	The whole.
XXXII of 1852	The whole.
I of 1853	The whole.
VII of 1854	So much of the Act as relates to warrants issued otherwise than under the provisions of the said Act.
X of 1854	So much of Section I as recites that the order passed by any Assistant or Deputy Magistrate shall be subject to appeal, and Sections II and III.
XII of 1854	The whole.
XV of 1855	The whole.
XVI of 1855	The whole.
XIX of 1855	Section V.
I of 1856	The whole.
II of 1856	The whole.
IV of 1856	The whole.
XVII of 1856	The whole.
III of 1857	So much of Section XIII as provides that offences under the said section shall be dealt with by the Police Officers according to the provisions of Section XXV, Regulation XX of 1817 of the Bengal Code, Section XXVII, Regulation XI of 1816 of the Madras Code, and Section XLIII, Regulation XII of 1827 of the Bombay Code.
VII of 1857	Section IV.
XI of 1857	Sections I and II.

Reference to Regulation or Act.	Extent of Repeal.
Act XXIV of 1859...	Sections XXII to XLIII both inclusive, and so much of the Schedule as repeals Clause I, Section XI of Regulation XI of 1816.
III of 1860	The whole Act.
XVII of 1860	Section XI.
XXXV of 1860	The whole Act.
XXII of 1861	Sections I, II, III, IV, and V.
BENGAL.	
Regulation IX of 1793	Sections IV, V, VI, VII, VIII, IX, X, XI, XII, XIV, XV, XVI, XVII, XVIII, XXIII, XXVI, XXVII, XXIX, XLVII, XLVIII, XLIX, L, LI, LIII, LIV, LVI, LVII, LVIII, LXI, LXIV, LXV, LXXIV, LXXV, LXXVII, and LXXVIII.
XIII of 1793	Sections IX and XI.
XXII of 1793... ...	Sections X, XVI, XXII, XXXI, XXXII, XXXIII, XXXIV, and XXXVIII.
VII of 1794	The whole Regulation.
XVI of 1795	Section IV, Clause 1, in so far as it extends the provisions of Regulation IX of 1793, which are repealed by this Act, and Clauses 2, 4, and 5, and the following sections of the Regulation.
XVII of 1795... ...	Sections X, XX, XXIX, XXX, XXXI, XXXII, and XXXV.
XXI of 1795	
II of 1796	The whole.
IX of 1796	
XI of 1796	
II of 1797	Section III.
IV of 1797	
XIII of 1797	
XIV of 1797	
III of 1798	
II of 1799	
IV of 1799	The whole.
VIII of 1799	
X of 1799	
III of 1801	
VIII of 1801	
VI of 1802	

Reference to Regulation or Act.	Extent of Repeal.
Regulation VI of 1803	The whole Regulation with exception of Sections III and XXXIV.
VII of 1803	From Section V to Section XLI, both inclusive.
VIII of 1803	The whole Regulation with exception of Sections VI, XXIV, and XXVI.
XII of 1803	Sections XII and XIV.
XX of 1803	The whole Regulation.
XXXV of 1803 ...	Section III, Clauses 3, 4, and 5, and Section X.
L of 1803	The whole.
LIII of 1803	The whole.
III of 1804	The whole.
IV of 1804	Proviso in Section VII.
IX of 1804	So much of the Regulation as extends the whole or any part of Regulations VI, VII, VIII, XX, XXXV, and LIII of 1803 which are repealed by this Act, to the Districts mentioned in Sections III and IV; Sections V and VI, and the proviso in Section XI.
III of 1805	The whole Regulation.
VIII of 1805	Section XIV.
I of 1806	Sections VI, VII, VIII, and IX.
XII of 1806	Section III, in so far as it extends the parts of Regulation IX of 1804, and Regulation VIII of 1805, and the other Regulations therein referred to, which are repealed by this Act.
XV of 1806	The whole.
II of 1807	The whole.
IX of 1807	The whole.
XIV of 1807	Section XI, Clauses, 7, 8, 9, 10, 11, and 12, Section XX and Section XXI.
VIII of 1808	The whole.
I of 1810	The whole.
VI of 1810	Sections III, IV, and V.
XIV of 1810	The whole Regulation.
I of 1811	The whole Regulation, except so much of Section X as declares landowners and others accountable for the early communication to the Magistrate for information respecting receivers of stolen goods.

Reference to Regulation or Act.	Extent of Repeal.
Regulation VI of 1811	The whole Regulation.
X of 1811	Section III.
XIV of 1811	The whole Regulation.
III of 1812	Sections II and III, so much of Section IV as provides a punishment for the offence mentioned in the section, Section VI and Section XII.
VII of 1813	Section III.
IX of 1813	The whole Regulation.
VIII of 1814	So much of Section II as provides a punishment for the offence mentioned in the section.
XI of 1814	The whole.
XV of 1814	The whole.
XIV of 1816	Sections IX and XV.
XVII of 1816	Section VIII, Clauses 3 and 4.
XVII of 1817	The whole Regulation.
XX of 1817	Clauses 3 and 4 of Section VI, Clauses 5, 6, and 7 of Section VIII, Sections IX, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXII, XXIII, XXIV, XXV, and XXVI.
VI of 1818	The whole.
VIII of 1818	The whole.
XII of 1818	The whole.
III of 1819	The whole.
VII of 1819	The whole.
IV of 1820	The whole.
VII of 1820	The whole.
III of 1821	The whole.
I of 1822	The whole.
IV of 1822	The whole.
VII of 1822	The whole.
II of 1823	The whole.
IV of 1823	The whole.
VI of 1824	The whole.
X of 1824	The whole.
I of 1825	The whole.
IV of 1825	The whole.
XII of 1825	The whole.
XVI of 1825	The whole.
I of 1828	The whole.
VI of 1828	The whole.
VIII of 1828	The whole.
VI of 1829	The whole.
VII of 1829	The whole.
XII of 1829	The whole.
XVII of 1829... ...	Sections IV and V.

Reference to Regulation or Act.	Extent of Repeal.
Regulation IV of 1830	The whole.
VIII of 1830	
VI of 1831	Sections XII and XIII.
VII of 1831	Sections V and VI, and so much of Section VII, as relates to Session Judges.
IX of 1831	Sections III and IV.
II of 1832	Sections II and III.
III of 1832	Clause 2 of Section II.
VI of 1832	Sections IV, V, and VI.
II of 1834	The whole Regulation, except Section VII.
MADRAS.	
III of 1802	Section VIII.
IV of 1802	Section XX.
VII of 1802	The whole Regulation.
VIII of 1802	Sections VIII, IX, X, XI, XIII, XIV, XV, XVI, XVII, XVIII, XX, XXI, XXIII, XXIV, and XXV.
XI of 1802	Section VIII.
XII of 1802	Sections XII, XIII, and XIV.
XV of 1803	The whole.
I of 1810	
VI of 1811	
VI of 1816	Section XLIX.
IX of 1816	The whole Regulation, except Sections II, III, IV, V & XLII, and Nos. 1 and 2 of Appendix.
X of 1816	The whole Regulation, except Section XL, and Appendix.
XI of 1816	The whole Regulation, except Sections VIII, IX, X, XI, Clause (Act XXXVI of 1867), XIII, XIV, and XLVII.
III of 1817	Section II.
I of 1818	The whole.
III of 1819	
V of 1819	
IV of 1821	The whole Regulation, except Section VI.
II of 1822	The whole.
VI of 1822	
I of 1824	
I of 1825	
III of 1826	
II of 1827	Section III.
III of 1827	The whole.
VI of 1827	

Reference to Regulation or Act.	Extent of Repeal.
Regulation VIII of 1827	So much of Section IV as provides for native Judges being guided by Regulation X of 1816, Sections V, VII, VIII, X, XI, XII, XIII, and Clauses 3 and 4 of Section XIV.
X of 1827	The whole.
VIII of 1828	The whole.
IX of 1828	The whole.
VI of 1829	The whole.
VIII of 1829	The whole.
II of 1830	The whole.
II of 1831	The whole.
III of 1831	The whole.
VIII of 1831	Section V.
VIII of 1832	The whole.
IX of 1832	The whole.
XIII of 1832	The whole.
II of 1833	The whole.
III of 1833	Section II.
I of 1834	The whole Regulation.
BOMBAY.	
II of 1827	Section XXXVI.
IV of 1827	Clause 4, Section XXXIV, also Section LII, and Sections LIV and LV.
XI of 1827	The whole Regulation.
XII of 1827	The whole Regulation, with the following exceptions. Section I, in as far as it applies to the Zillah Magistrate; Clause I of Section III, in as far as it relates to the Police functions of the Zillah Magistrate; Clause 2 of Section III; Clause 5 of the same section, in as far as it extends to the Zillah Magistrate; Section IV, in as far as it extends to Assistant Collectors in charge; Sec. VI; Clause 4 of Sec. X; Clause I of Section XIII, in as far as it regulates the endorsement and record or warrants issued by Magistrate; Clauses 1, 6, 7, and 8 of Section XIX; Section XX; Clause 1 of Section XXII, in as far as it relates to the superintendence of Village Police; Clause 2 of Section XVII; Section XXX; Clause 4 of Section XXXI; Sections XXXVII and XL; and Chapter VI.

Reference to Regulation or Act.	Extent of Repeal.
Regulation XIII of 1827	Sections IV, V, VI, X, XI, XII, and XIII; Chapters III and IV; Sections XXIX and XXX; Clauses 1 and 2, Section XXXI, Clause 3 of Section XXXIII, and the whole of Chapter VI, except Clause 3 of Section XXXIX, in as far as it authorizes the occasional substitution of a letter for a summons, and except Clause 9 of the same section, Clause 2 of Section XXXVI, and Clauses 1 and 2 of Section XLIII.
XIV of 1827	The whole Regulation, except Clause 2 of Section III, and Sections XX and XXIII.
XV of 1827	The whole.
XXIII of 1827 ...	The whole.
XXX of 1827	The whole.
XVI of 1828	The whole.
III of 1830	The whole Regulation, except Sections II, IV, VI, and VII.
IV of 1830	The whole Regulation, except Clause 1 of Section I, and Section II.
XVI of 1830	The whole.
XIX of 1830	The whole.
V of 1831	The whole.
VIII of 1831	The whole Regulation, except Section I.
IX of 1831	The whole.
III of 1833	The whole.
VII of 1833	The whole.
VIII of 1833	The whole.

ACT No. XVIII of 1862.

Passed by the Governor-General of India in Council.

(Received the assent of the Governor-General on the 1st May, 1862.)

An Act to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature.

Preamble.

Whereas, in consequence of the passing of the Indian Penal Code, many of the provisions of Act XVI of 1852 *(for further improving the administration of Criminal Justice in Her Majesty's Courts of Justice in the territories of the East India Company)* have become inapplicable and others require amendment, and it is expedient to repeal the said Act, and, pending the preparation of a Code of Criminal Procedure for Her Majesty's Supreme Courts of Judicature, to re-enact some of the provisions of the said Act, and to make further provision for the administration of Criminal Justice in such Courts ; It is enacted as follows :—

1—25. *Repealed by Act X of* 1875.

Absence of general exceptions under the Penal Code to be assumed.

26. It shall not be necessary to allege in an indictment any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come within any of the general exceptions contained in Chapter IV of the Indian Penal Code, or within the exceptions contained in Section 136, Section 300, Section 323, Section 324, Section 325, Section 326, Section 375, or Section 499 of the said Code, but every charge shall be understood to assume the absence of all such circumstances, and it shall not be necessary on the part of the prosecutor to prove at the trial the absence of such circumstance; but the person indicted shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may then be given on the part of the prosecutor.

Evidence as to general exception.

Good faith to be presumed in certain cases.

27. In proving the existence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, or 10th exception to Section 499 of the Indian Penal Code, good faith shall be presumed unless the contrary appear.

Words in indictments to be taken in the sense of the Penal Code.

28. In every indictment, words used in describing an offence shall be deemed to have been used in the sense attached to them by the Indian Penal Code.

Trials for murder or culpable

29. Any person accused of murder, or of culpable homicide not amounting to murder, may be dealt with, tried, and

homicide, if the act which caused or the death took place within the jurisdiction.

punished by any of Her Majesty's Supreme Courts of Judicature, if the act which shall have caused the death shall have been committed wholly or partly within the local limits of the jurisdiction of such Court, or if the death shall have taken place within such local limits, in the same manner as if both the act had been committed and the death had taken place within such local limits.

Supreme Court may deal with offence either commenced or completed within local jurisdiction.

30. Any person accused of an offence may be dealt with, tried, and punished by any of Her Majesty's Supreme Courts of Judicature, if the offence shall have been either commenced or completed within the local limits of the jurisdiction of such Court, in the same manner as if the offence had been wholly and entirely committed within such local limits.

Offence may be dealt with if either the act was done or the consequence ensued within the jurisdiction.

31. Whenever the offence of which any person shall be accused shall consist of any thing which has been done and of any consequence which has ensued therefrom, the person accused may be dealt with, tried, and punished by any of Her Majesty's Supreme Courts of Judicature if either the act shall have been done or the consequence shall have ensued within the local limits of the jurisdiction of such Court, in the same manner as if both the act had been done and the consequence had ensued within such local limits.

Receiving stolen property, when part only of the offence is committed within the jurisdiction.

32. Whenever a person shall be accused of any offence punishable under Sections 411, 412, 413, or 414 of the Indian Penal Code in respect to the receiving or retaining of stolen property, such person may be dealt with, tried, and

punished by any of Her Majesty's Supreme Courts of Judicature if the offence by which the possession of the property shall have been transferred, shall have been committed either wholly or in part within the local limits of the jurisdiction of such Court; or if any of the stolen property shall have been received or retained by the person accused within such local limits.

Similar provision as to dishonest removal or concealment of property.

33. If any person shall be accused of any offence under Section 424 of the Indian Penal Code of dishonestly or fraudulently concealing or removing any property of himself, or of any other person, or of dishonestly or fraudulently assisting, or fraudulently assisting in the concealment or removal thereof, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme Courts of Judicature, if the property shall have been concealed or removed in any place within the local limits of such Court, or shall have been removed from any place within such local limits.

Provision for cases on the boundaries or near the boundaries of local jurisdiction.

34. If any act shall have been committed, or the consequence of any act shall have ensued, on the boundaries of the local jurisdiction of such Court, or so near to such boundaries as to render it doubtful whether such act was committed or such consequence ensued within such local limits or not, such act or consequence may for all purposes be stated, deemed, and taken to have been committed or to have ensued within such local limits.

Provision for the case of offences committed on a journey or voyage.

35. If any person shall be accused of any offence alleged to have been committed on a journey or on any voyage in British India, such person may be dealt with,

tried, and punished by any of Her Majesty's Supreme Courts of Judicature, if any part of the journey or voyage shall have been performed within the local limits of the jurisdiction of such Court.

36—46. *Repealed by Act X of 1875.*

47—52. *Repealed by Act XII of 1867.*

Provision for persons now in the House of Correction.

53. From and after the passing of this Act all persons who are confined at the date of passing of this Act in the House of Correction, whether under the sentence of any of Her Majesty's Supreme Courts of Judicature, or of any Justice of the Peace or Police Magistrate, shall be considered to be and shall remain in the custody of the Officer in whom the control of such House of Correction is vested, whether such Officer be the Sheriff or not, or of the keeper of such House of Correction, and such Officer and keeper shall be responsible for the safe custody of all such persons.

54—56. *Repealed by Act X of 1875.*

Definitions.

"Indictment."

"Finding of the indictment."

Number and gender.

57. In the construction of this Act, unless where a contrary intention appears from the context, the word "indictment" shall be understood to include information, inquisition, or presentment, as well as indictment, and also any plea, replication, or other pleading; and the term "finding of the indictment" shall be understood to include the taking of an inquisition, the exhibiting of an information, and the making of a presentment; and words importing the singular number or masculine gender shall include several persons and parties as well as one person or party,

and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter and thing. Words which refer to acts done shall include illegal omissions. The words "British India" shall denote the territories that are or shall become vested in Her Majesty by the Statute 21 & 22 Vict. c. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

Acts done.

"British India."

Property.

ACT No. VI OF 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General, on the 18th February, 1864.)

An Act to authorise the punishment of Whipping in certain cases.

Preamble.

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping, it is enacted as follows :—

Whipping added to the punishment described in Section 53 of the Penal Code.

1. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

2. Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code, that is to say :—

1. Theft, as defined in Section 378 of the said Code.

2. Theft in a building, tent, or vessel, as defined in Section 380 of the said Code.

3. Theft by a clerk or servant, as defined in Section 381 of the said Code.

4. Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.

5. Extortion by threat, as defined in Section 388 of the said Code.

6. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.

7. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.

8. Dishonestly receiving property stolen in the commission of a Dacoity, as defined in Section 412 of the said Code.

9. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

10. Lurking house-trespass by night, or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

The effect of the Whipping Act is to make whipping a punishment under the Penal Code. Therefore, if a prisoner is convicted on the same day of two offences, for one of which whipping may be inflicted either in substitution of, or in addition to, other punishment, such whipping may be inflicted for such offence, and any other legal penalty for the other offence. (7 B.L.R. 165, over-ruling the F.B. decision in Nassir *v.* Chunder, 5 R.C.C.R. 45; 5 Mad. H.C. Rul. 18; 6 Bomb. C.C. 83.)

On second conviction of any offence mentioned in last section, whipping may be added to other punishment.

3. Whoever, having been previously convicted of any one of the offences specified in the last preceding section, shall again be convicted of the same offence, may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence be liable under the Indian Penal Code.

It is held both by the Bengal and Bombay High Courts that s. 3 of this Act only applies to the cases of persons who having undergone the punishment for a previous offence, and being undeterred or unreformed by it, commit a second offence. (4 B.A. Cr. 5; 1 R.C.C. Cr. 60; 3 Bomb. C.C. 38; 7 Ibid. 70.) The Madras High Court take an opposite view, and have twice laid it down that the previous conviction required by s. 3 of the Whipping Act might be on the same day, and that the section did not mean "previously convicted and punished." (5 Mad. H.C. Rul. 18.) I confess that the Ruling of the Bengal and Bombay Courts recommends itself more to my judgment. Of course the same construction would be applicable to the following section.

The previous offence must also be the same offence as that of which the prisoner is convicted the second time. Therefore, a previous conviction for simple theft does not render whipping permissible on a subsequent conviction for theft in a dwelling-house. (5 Mad. H.C. Rul. 1; 7 Bomb. C.C. 68) *Quære* the special instance. In each case the same offence of theft had been committed, though on the second occasion in a place which rendered that offence more highly punishable.

Offences punishable in case of second conviction, with whipping in addition to other punishment.

4. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code, that is to say :—

1. Giving or fabricating false evidence in such manner as to be punishable under Section 193 of the Indian Penal Code.

2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.

3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.

4. Falsely charging any person with having committed an unnatural offence, as defined in Sections 211 and 377 of the said Code.

5. Assaulting or using Criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.

6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Robbery or Dacoity, as defined in Sections 390 and 391 of the said Code.

9. Attempting to commit robbery, as defined in Section 393 of the said Code.

10. Voluntarily causing hurt in committing robbery, as defined in Section 394 of the said Code.

11. Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

12. Forgery, as defined in Section 463 of the said Code.

13. Forgery of a document, as defined in Section 466 of the said Code.

14. Forgery of a document, as defined in Section 467 of the said Code.

15. Forgery for the purpose of cheating, as defining in Section 468 of the said Code.

16. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code.

17. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

18. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

Juvenile offender punishable with whipping for offences not punishable with death.

5. Any juvenile offender who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

The Bombay High Court considers any person under 16 to be a juvenile offender. (8 Bomb. C.C. 9.)

When offences specified in Section 4 may be punished with whipping in frontier Districts and wild tracts.

6. Whenever any local Government shall by Notification in the official Gazette have declared the provisions of this section to be in force in any frontier District or any wild tract of country within the jurisdiction of such local Government, any person who shall in such district or tract of country after such Notification as aforesaid commit any of the offences specified in Section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

Exemption of females.

7. No female shall be punished with whipping, nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, be punished with whipping.

This section applies even though the sentence of transportation, &c., has been passed in a different case, provided it has been already passed before the whipping is, awarded. (1 Mad. L.R. 56.)

Officers inferior to subordinate Magistrate of the 1st class not to pass sentence of whipping unless expressly empowered by Government.

8. (This section is repealed by the Cr. P.C. of 1872, which provides (s. 20) that whipping may be inflicted by Magistrates of the 1st and 2nd but not of the 3rd class.)

The extent of whipping to which a Magistrate may sentence is not limited, except by s. 10 of Act VI of 1864, which limits the amount of the punishment generally. It matters not whether whipping is imposed as a punishment by a Magistrate or by a Sessions Judge, each of them, if he can pass the sentence at all, can impose it to the full extent authorized by the Act. (Per Peacock, C.J., 5 R.C.C.C.R. 53; 5 Mad. H.C. Rul. 18.)

Whipping if awarded in addition to imprisonment when to be inflicted.

9. (When the punishment of whipping is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or if an appeal be made within that time until the sentence is confirmed by the superior Court, but the whipping shall be inflicted immediately on the expiry of the fifteen days, or in case of an appeal immediately on the receipt of the order of the Court confirming the sentence.) (Cr. P.C., s. 310.)

A sentence of flogging cannot be carried out after the expiry of the 15 days. (6 Mad. H.C. Rul. 38.)

Mode of inflicting the punishment.

10. (In the case of a person of or over 16 years of age, the punishment or whipping shall be inflicted with such instrument in such mode and on such part of the person as the local Government shall direct, and in the case of a person under 16 years of age it shall be inflicted in the way of school discipline with a light rattan. In no case, if the cat-o'-nine-tails be the instrument employed, shall the punish-

ment of whipping exceed 150 lashes, or if the rattan be employed shall the punishment exceed 30 stripes. The punishment shall be inflicted in the presence of a Magistrate, or a Superintendent of a Jail, (Act XI of 1874, s. 33) and, also, unless the Court which passed the sentence shall otherwise order, in the presence of a Medical Officer.) Cr. P. C., s. 311.)

Punishment not to be inflicted if offender not in fit state of health.

Nor by instalment.

11. (No sentence of whipping shall be carried into execution unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or Superintendent (Act XI of 1874, s. 33) present, that the offender is in a fit state of health to undergo the punishment; and if, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or Superintendent (Act XI of 1874, s. 33) present, that the offender is not in a fit state of health to undergo the remainder of the punishment, execution shall be stayed. No sentence of whipping shall be executed by instalments.) Cr. P. C., s. 312.)

Accordingly, if the prisoner is unable to suffer his whole sentence of whipping he must be discharged as to the residue. (3 R.C.C. Circ. 3; 3 Mad. H. C. Appx. 1.)

Procedure if punishment cannot be inflicted under the last section.

12. (In any case in which, under Section 312, sentence of whipping is wholly or partially prevented from being carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it, and the said Court may, at its discretion, either order the discharge of the offender, or sentence him in lieu of whipping, or in lieu of so much of the sentence of whipping as was not carried out, to imprisonment

for any period which may be in addition to any other punishment to which he may have been sentenced for the same offence ; provided that the whole period of imprisonment shall not exceed that to which the offender is liable by law, or that which the said Court is competent to award.) (Cr. P.C., s. 313.)

Sentences of whipping awarded by the High Court shall be carried out in the manner provided by the Cr. P.C., ss. 311-313. (Act X of 1875, s. 108.)

ACT No. XXXI of 1867.

Passed by the Governor-General of India in Council.

(Received the assent of the Governor-General on the 26th June, 1867.)

(An Act to render penal certain offences committed by servants of Railway Companies.)

Preamble.

Whereas it is expedient to extend certain provisions of the Indian Penal Code relating to public servants to persons in the employment of Railway Companies; It is hereby enacted as follows :—

Interpretation Clause.

1. In this Act "Railway Company" means the proprietors for the time being of every railway or tramway situate in the territories vested in Her Majesty or Her Successors under the Statute 21 & 22 Vict. cap. 106 *(An Act for the better Government of India)*, or (so far only as regards British subjects within the dominions hereinafter mentioned) situate in the dominions of Princes and States in the East Indies in alliance with Her Majesty or Her Successors, and the lessees, representatives, and assigns of such proprietors.

Railway officer and servants to be 'public servants' within meaning of Penal Code.

2. Every officer and servant of a Railway Company shall be deemed a "public servant" within the meaning of Sections 161, 162, 163, 164, and 165 of the Indian Penal Code.

"Government" to include a Railway Company.

3. In the definition of legal remuneration contained in the said Section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a Railway Company.

Short title.

4. This Act shall be called "The Railway Servants' Act, 1867."

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 25th November, 1870, *and is hereby promulgated for general information :—*

ACT NO. XXVII OF 1870.

An Act to amend the Indian Penal Code.

Preamble.

For the purpose of amending the Indian Penal Code, it is hereby enacted as follows :—

1. For Section thirty-four of the said Code the following section shall be substituted :—

Liability for act done by several persons in furtherance of common intention.

" 34. When a Criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

2. For Section forty of the said Code the following section shall be substituted :—

" Offence."

" 40. Except in the Chapter and Sections mentioned in clauses two and three of this section, the word " offence" denotes a thing made punishable by this Code.

" In Chapter IV and in the following sections, namely, Sections 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word 'offence' denotes a thing

punishable under this Code, or under any special or local law as hereinafter defined :—

"And in Sections 141, 176, 177, 201, 202, 212, 216, and 441, the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."

3. Section fifty-six of the said Code shall be read as if the following proviso were added thereto :—

Proviso as to sentence for term exceeding ten years, but not for life.

"Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life."

4. After Section one hundred and twenty-one of the said Code the following section shall be inserted :—

Conspiracy to commit offences punishable by Section 121.

"121A. Whoever within or without British India conspires to commit any of the offences punishable by Section one hundred and twenty-one, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years."

"*Explanation.*—To constitute a conspiracy under

this section it is not necessary that any act or illegal omission shall take place in pursuance thereof."

5. After Section one hundred and twenty-four of the said Code, the following Section shall be inserted :—

Exciting disaffection.

"124A. Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

"*Explanation*.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause."

Addition to Section 131.

6. Section one hundred and thirty-one of the said Code shall be read as if the following explanation were added thereto :—

"*Explanation*.—In this section the words "officer" and "soldier" include any person subject to the Articles of War for the better Government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869."

Amendment of Sections 194 and 195.

7. Sections one hundred and ninety-four and one hundred and ninety-five of the said Code shall be read as if, after the words 'by this Code,' the words 'or the law of England' were inserted.

Amendment of Sections 222 and 223.

8. Sections two hundred and twenty-two and two hundred and twenty-three of the said Code shall be construed as if, after the word 'offence,' the following words were inserted (that is to say), "or lawfully committed to custody;"

And Section two hundred and twenty-two of the said Code shall be construed as if the following words were added thereto (that is to say), "or if the person was lawfully committed to custody."

9. After Section two hundred and twenty-five of the said Code, the following section shall be inserted :—

Escape from custody for failing to furnish security.

"225A. Whoever escapes or attempts to escape from any custody in which he is lawfully detained for failing, under the Code of Criminal Procedure, to furnish security for good behaviour shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

10. After Section two hundred and ninety-four, and before Chapter XV of the Indian Penal Code, the following section shall be inserted.

Keeping lottery office.

"294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

"And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees."

11. Section three hundred and seven of the said Code shall be read as if the following clause were added thereto :—

Attempts by life-convicts.

"When any person offending under this Section is under sentence of transportation for life, he may, if hurt is caused, be punished with death."

12. After Section three hundred and four of the same Code the following Section shall be inserted :—

Causing death by negligence.

"304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Application of certain Chapters of Penal Code.

13. The following Chapters of the same Code, namely, IV *(General Exceptions)*, V *(Of Abetment)*, and XXIII *(Of Attempts to commit Offences)* shall apply to offences punishable under the said Sections 121A, 294A, and 304A, and the said Chapters IV and V shall apply to offences punishable under the said Sections 124A and 225A.

Order of local Government necessary to prosecution under Section 121A, 124A or 294A.

14. No charge of an offence punishable under any of the said Sections 121A, 124A and 294A shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.

Saving of special and local laws.

15. Nothing contained in this Act shall be taken to effect any of the provisions of any special or local law.

SCHEDULE IV.

EXPLANATORY NOTES.—*1st.*—The entries in the 2nd and 6th columns of the Schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the 1st column.

2nd.—The term "Whether bailable or not," in column 5, is to be taken in connection with the provisions of ss. 388 & 389 of this Code.

3rd.—Offences may be tried by a Court superior to the Court specifically mentioned in column 7. For example, a Court of Session may try an offence entered in column 7 as triable by a Magistrate.

4th.—The words "any Magistrate," as used in column 7, shall include any Magistrate of the 1st, 2nd or 3rd class.

5th.—In the territories in British India to which the General Regulations of Bengal, Madras, and Bombay do not extend, the powers given by this Act shall be exercised by such officers as the Local Government of those territories respectively shall appoint.

6th.—The last part of the Schedule, headed "Offences against other Laws," shall not be taken to alter or affect any special provision contained in such laws regarding the procedure to be followed in the case of offences made punishable thereby.

7th.—The direction in column 4 is meant to indicate to Magistrates the manner in which the discretion vested in them by ss. 148, 149, & 150 is commonly to be used, but it is not to affect the definition of summons cases and warrant cases given in s. 4.

CHAPTER V.—OF ABETMENT.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.

CHAPTER V.—OF ABETMENT—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
111	When one act is abetted and a different act is done, subject to the proviso.	ditto	ditto	ditto	The same punishment as for the offence intended to be abetted.	ditto
113	When an effect is caused by the act abetted different from that intended by the abettor.	ditto	ditto	ditto	The same punishment as for the offence committed.	ditto
114	If abettor is present when offence is committed.	ditto	ditto	ditto	ditto	ditto
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	ditto	ditto	Not bailable.	Imprisonment of either description for 7 years, and fine.	ditto
	If an act which causes harm to be done in consequence of the abetment.	ditto	ditto	ditto	Imprisonment of either description for 14 years, and fine.	ditto
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	ditto	ditto	According as the offence abetted is bailable or not.	Imprisonment extending to $\frac{1}{4}$ part of the longest term, and of any description provided for the offence, or fine, or both.	ditto

	If the abettor or the person abetted be a public servant, whose duty is to prevent the offence.	ditto	ditto	ditto	Imprisonment extending to $\frac{1}{2}$ of the longest term, and of any description provided for the offence, or fine, or both.	ditto
117	Abetting the commission of an offence by the public, or by more than 10 persons.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	ditto
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	ditto	ditto	Not bailable.	Imprisonment of either description for 7 years, and fine.	ditto
	If the offence be not committed. ...	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	ditto
119	A public servant concealing a design to commit an offence, which it is his duty to prevent, if the offence be committed.	ditto	ditto	According as the offence abetted is bailable or not.	Imprisonment extending to $\frac{1}{2}$ of the longest term, and of any description provided for the offence, or fine, or both.	ditto
	If the offence be punishable with death or transportation.	ditto	ditto	Not bailable.	Imprisonment of either description for 10 years.	ditto
	If the offence be not committed. ...	ditto	ditto	According as the offence abetted is bailable or not.	Imprisonment extending to $\frac{1}{4}$ part of the longest term, and of any description provided for the offence, or fine, or both.	ditto
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	ditto	ditto	ditto	Imprisonment extending to $\frac{1}{4}$ part of the longest term, and of the description provided for the offence, or fine, or both.	ditto
	If not committed. ...	ditto	ditto	ditto	Imprisonment extending to $\frac{1}{8}$ part of the longest term, and of the description provided for the offence, or fine, or both.	ditto

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war against the Queen.	Shall not arrest without warrant.	Warrant.	Not bailable.	Death, or transportation for life, and forfeiture of property.	Court of Session.

CHAPTER VI.—OFFENCES AGAINST THE STATE—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
121A	Conspiring to commit certain offences against the State.	Shall not arrest without warrant.	Warrant.	Not bailable.	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Court of Session.
122	Collecting arms, &c., with the intention of waging war against the Queen.	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	ditto
123	Concealing with intent to facilitate a design to wage war.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
124A	Exciting, or attempting to excite, disaffection.	ditto	ditto	ditto	Transportation for life or for any term and fine, or imprisonment of either description for 3 years, and fine, or both.	ditto
125	Waging war against any Asiatic power in alliance or at peace with the Queen, or abetting the waging of such war.	ditto	ditto	ditto	Transportation for life and fine, or imprisonment of either description for 7 years, and fine, or both.	ditto
126	Committing depredation on the territories of any power in alliance or at peace with the Queen.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine, and forfeiture of certain property.	ditto
127	Receiving property taken by war or depredation mentioned in ss. 125 & 126.	ditto	ditto	ditto	ditto	ditto

128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	ditto
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	ditto	ditto	Bailable.	Simple imprisonment for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
130	Aiding escape of, rescuing, or harbouring such prisoner, or offering any resistance to the re-capture of such prisoner.	ditto	ditto	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier, or sailor from his allegiance or duty.	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	ditto	ditto	ditto	Death or transportation for life, or imprisonment of either description for 10 years, and fine.	ditto
133	Abetment of an assault by an officer, soldier, or sailor on his superior officer when in the execution of his office.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
134	Abetment of such assault, if the assault is committed.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier, or sailor.	ditto	ditto	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
136	Harbouring such an officer, soldier, or sailor who has deserted.	ditto	ditto	ditto	ditto	ditto
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons.	ditto	Fine of 500 rupees.	ditto

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
138	Abetment of act of insubordination by an officer, soldier, or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the 1st or 2nd class.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	ditto	Summons.	ditto	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

1	2	3	4	5	6	7
143	Being member of an unlawful assembly ...	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	ditto	Warrant.	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	ditto	ditto	ditto	ditto	ditto
147	Rioting ...	ditto	ditto	ditto	ditto	ditto
148	Rioting armed with a deadly weapon ...	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.

149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	The same as for the offence.	By the Court by which the offence is triable.
150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	ditto	The same as for a member of such assembly, and for any member of such assembly.	ditto
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	ditto	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	ditto	Warrant.	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	ditto	ditto	ditto	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed. ...	ditto	Summons.	ditto	Imprisonment of either description for 6 months, or fine, or both.	ditto
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	ditto	ditto	Fine of 1,000 rupees. ...	Magistrate of the 1st or 2nd class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	ditto	ditto	ditto	Fine. ...	ditto
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	ditto	ditto	ditto	ditto ...	ditto
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	ditto	ditto	Imprisonment of either description for 6 months, or fine, or both.	ditto

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
158	Being hired to take part in an unlawful assembly or riot.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the 1st or 2nd class.
	Or to go armed. ...	ditto	Warrant.	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
160	Commiting affray. ...	Shall not arrest without warrant.	Summons.	ditto	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	ditto	ditto	ditto	ditto	ditto
163	Taking a gratification for the exercise of personal influence with a public servant.	ditto	ditto	ditto	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the 1st class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.

165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	ditto	ditto	ditto	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	ditto	ditto	ditto	Simple imprisonment for 1 year, or fine, or both.	ditto
167	Public servant framing an incorrect document with intent to cause injury.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
168	Public servant unlawfully engaging in trade.	ditto	ditto	ditto	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the 1st class.
169	Public servant unlawfully buying or bidding for property.	ditto	ditto	ditto	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	ditto
170	Personating a public servant. ...	May arrest without warrant.	Warrant.	ditto	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	ditto	Summons.	ditto	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	ditto

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of Justice.	ditto	ditto	ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	ditto
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	ditto	ditto	ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Magistrate of the 1st or 2nd class.

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CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Shall not arrrest without warrant.	Summons.	Bailable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	ditto	ditto	ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	ditto
	If the order require personal attendance, &c., in a Court of Justice.	ditto	ditto	ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	ditto
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	ditto	ditto	ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Court in which the offence is committed, subject to the provisions of Chap. XXXII of this Code, or if not committed in a Court, a Magistrate of the 1st or 2nd class.
	If the document is required to be produced in or delivered to a Court of Justice.	ditto	ditto	ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	ditto
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	ditto	ditto	ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Magistrate of the 1st or 2nd class.

	If the notice or information required respects the commission of an offence, &c.	ditto	ditto	ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	ditto
177	Knowingly furnishing false information to a public servant.	ditto	ditto	ditto	ditto	ditto
	If the information required respects the commission of an offence, &c.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
178	Refusing oath when duly required to take oath by a public servant.	ditto	ditto	ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions of Chap. XXXII of this Code, or if not committed in a Court, a Magistrate of the 1st or 2nd class.
179	being legally bound to state truth, and refusing to answer questions.	ditto	ditto	ditto	ditto	ditto
180	Refusing to sign a statement made to a public servant when legally required to do so.	ditto	ditto	ditto	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	ditto
181	Knowingly stating to a public servant on oath as true that which is false.	ditto	Warrant.	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	ditto	Summons.	ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Magistrate of the 1st or 2nd class.
183	Resistance to the taking of property by the lawful authority of a public servant.	ditto	ditto	ditto	ditto	ditto
184	Obstructing sale of property offered for sale by authority of a public servant.	ditto	ditto	ditto	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	ditto

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
185	Bidding by a person under a legal incapacity to purchase it for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Magistrate of the 1st or 2nd class.
186	Obstructing public servant in discharge of his public functions.	ditto	ditto	ditto	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	ditto
187	Omission to assist public servant when bound by law to give such assistance.	ditto	ditto	ditto	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	ditto
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	ditto	ditto	ditto	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	ditto
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	ditto	ditto	ditto	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	ditto
	If such disobedience causes danger to human life, health, or safety, &c.	ditto	ditto	ditto	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	ditto
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	ditto	ditto	ditto	Imprisonment of either description for 1 year, or fine, or both.	ditto

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the 1st class.
	Giving or fabricating false evidence in any other case.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	ditto
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	ditto	ditto	Not bailable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	ditto	ditto	ditto	Death, or as above. ...	ditto
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation, or imprisonment for more than seven years.	ditto	ditto	ditto	The same as for the offence. ...	ditto
196	Using in a judicial proceeding evidence known to be false or fabricated.	ditto	ditto	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.	Court of Session, or Magistrate of the 1st class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	ditto	ditto	Bailable.	The same as for giving false evidence.	ditto
198	Using as a true certificate one known to be false in a material point.	ditto	ditto	ditto	ditto	ditto
199	False statement made in any declaration which is by law received as evidence.	ditto	ditto	ditto	ditto	ditto
200	Using as true any such declaration known to be false.	ditto	ditto	ditto	ditto	ditto
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If punishable with transportation, or imprisonment for 10 years.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
	If punishable with less than 10 years' imprisonment.	ditto	ditto	ditto	Imprisonment for quarter of the longest term, and of the description provided for the offence, or fine, or both.	By a Magistrate of the 1st class or by the Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	ditto	ditto	ditto	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the 1st or 2nd class.
203	Giving false information respecting an offence committed.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
204	Secreting or destroying any document to prevent its production as evidence.	ditto	ditto	ditto	ditto	Magistrate of the 1st class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.

207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	ditto	ditto	ditto	ditto	ditto
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	ditto	ditto	ditto	ditto	Magistrate of the 1st class.
209	False claim in a Court of Justice. ...	ditto	ditto	ditto	Imprisonment of either description for 2 years, and fine.	ditto
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
211	False charge of offence made with intent to injure.	ditto	ditto	ditto	ditto	ditto
	If offence charged be capital or punishable with transportation for life, or imprisonment for 7 years, or upwards.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
212	Harbouring an offender if the offence be capital.	May arrest without warrant.	ditto	ditto	Imprisonment of either description for 5 years, and fine.	Court of Session, or Magistrate of the 1st class.
	If punishable with transportation for life, or with imprisonment for 10 years.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	ditto
	If punishable with imprisonment for one year, and not for 10 years.	ditto	ditto	ditto	Imprisonment for ¼ of the longest term, and of the description provided for the offence, or fine, or both.	By the Magistrate of the 1st class, or by the Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If with the imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment for ¼ of the longest term, and of the description provided for the offence, or fine, or both.	By a Magistrate of the 1st class, or by the Court by which the offence is triable.
214	Gift made to cause restoration of property in consideration of screening offender, if the offence be capital.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
	If with imprisonment for less than 10 years.	ditto	ditto	ditto	Imprisonment for ¼ of the longest term, and of the description provided for the offence, or fine, or both.	By a Magistrate of the 1st class, or by the Court by which the offence is triable.
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st class.

216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the 1st class.
	If punishable with transportation for life, or with imprisonment for 10 years.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	ditto
	If with imprisonment for one year and not for 10 years.	ditto	ditto	ditto	Imprisonment for $\frac{1}{4}$ of the longest term, and of the description provided for the offence, or fine, or both.	By a Magistrate of the 1st class, or by the Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons.	ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	ditto	ditto	Warrant.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding making or pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	ditto	ditto	ditto	Imprisonment of either description for 7 years, or fine, or both.	ditto
220	Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.	ditto	ditto	ditto	ditto	ditto
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	ditto	ditto	ditto	Imprisonment of either description for 7 years, with or without fine.	ditto
	If punishable with transportation for life, or imprisonment for 10 years.	ditto	ditto	ditto	Imprisonment of either description for 3 years, with or without fine.	Court of Session, or Magistrate of the 1st class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Summons.	Warrant.	Imprisonment of either description for 2 years, with or without fine.	Magistrate of the 1st or 2nd class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	ditto	ditto	Not bailable.	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation for life, or imprisonment or penal servitude for 10 years or upwards.	ditto	ditto	ditto	Imprisonment of either description for 7 years, with or without fine.	ditto
	If under sentence of imprisonment for less than 10 years.	ditto	ditto	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
223	Escape from confinement negligently suffered by a public servant.	ditto	ditto	ditto	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant.	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	ditto	ditto	ditto	ditto	ditto
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	ditto	ditto	Not bailable.	Imprisonment of either description for 3 years, and fine.	Court of Session or Magistrate of the 1st class.

	If charged with a capital offence. ...	ditto	ditto	ditto	Imprisonment of either description for 7 years, or fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards.	ditto	ditto	ditto	ditto	ditto
	If under sentence of death. ...	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	ditto
225A	Escape or attempt to escape, from custody for failing to furnish security for good behaviour.	ditto	ditto	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the 1st or 2nd class.
226	Unlawful return from transportation ...	ditto	ditto	Not bailable.	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons.	ditto	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	ditto	ditto	Bailable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions contained in Chapter XXXII of this Code.
229	Personation of a juror or assessor. ...	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of 1st class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting or performing any part of the process of counterfeiting Coin.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
232	Counterfeiting or performing any part of the process of counterfeiting the Queen's Coin.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
233	Making, buying, or selling instrument for the purpose of counterfeiting Coin.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's Coin.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting Coin.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
	If Queen's Coin. ...	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	Court of Session.
236	Abetting in India the counterfeiting out of British India of Coin.	ditto	ditto	ditto	The punishment provided for abetting the counterfeiting of such coin within British India.	ditto
237	Import or export of counterfeit Coin knowing the same to be counterfeit.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
238	Import or export of counterfeits of the Queen's Coin, knowing the same to be counterfeit.	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit Coin known to be such when it came into possession, and delivering, &c., the same to any person.	ditto	ditto	ditto	Imprisonment of either description for 5 years, and fine.	Court of Session, or Magistrate of the 1st class.

240	The same with respect to the Queen's Coin.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
241	Knowingly delivering to another any counterfeit Coin as genuine which when first possessed the deliverer did not know to be counterfeit.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine of 10 times the value of the Coin counterfeited, or both.	Magistrate of the 1st or 2nd class.
242	Possession of counterfeit Coin by a person who knew it to be counterfeit when he became possessed thereof.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
243	Possession of Queen's Coin by a person who knew it to be counterfeit when he became possessed thereof.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
244	Persons employed in a Mint causing Coin to be of a different weight or composition from that fixed by law.	ditto	ditto	ditto	ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	ditto	ditto	ditto	ditto	ditto
246	Fraudulently diminishing the weight or altering the composition of any Coin.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's Coin.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
248	Altering appearance of any Coin with intent that it shall pass as a Coin of a different description.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	ditto
249	Altering appearance of the Queen's Coin with intent that it shall pass as a Coin of a different description.	ditto	ditto	ditto	ditto	ditto
250	Delivery to another of Coin possessed with the knowledge that it is altered.	ditto	ditto	ditto	Imprisonment of either description for 5 years, and fine.	ditto
251	Delivery of Queen's Coin possessed with the knowledge that it is altered.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
252	Possession of altered Coin by a person who knew it to be altered when he became possessed thereof.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	ditto

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
253	Possession of Queen's Coin by a person who knew it to be altered when he became possessed thereof.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 5 years, and fine.	Court of Session, or Magistrate of the 1st class.
254	Delivery to another of Coin as genuine, which, when first possessed, the deliverer did not know to be altered.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine of ten times the value of the Coin.	Magistrate of the 1st or 2nd class.
255	Counterfeiting a Government stamp. ...	ditto	ditto	Bailable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp.	ditto	ditto	ditto	ditto	ditto
258	Sale of counterfeit Government stamp. ...	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
259	Having possession of a counterfeit Government stamp.	ditto	ditto	ditto	ditto	Court of Session, or Magistrate of the 1st class.
260	Using as genuine a Government stamp known to be counterfeit.	ditto	ditto	ditto	Imprisonment of either description for 7 years, or fine, or both.	ditto
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp, used for it with intent to cause wrongful loss to Government.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	ditto

262	Using a Government stamp known to have been before used.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
263	Erasure of mark denoting that stamp has been used.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 year, or fine or both.	Magistrate of the 1st or 2nd class.
265	Fraudulent use of false weight or measure.	ditto	ditto	ditto	ditto	ditto
266	Being in possession of false weights or measures for fraudulent use.	ditto	ditto	ditto	ditto	ditto
267	Making or selling false weights or measures for fraudulent use.	ditto	ditto	ditto	ditto	ditto

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 year, or fine or both.	Magistrate of the 1st or 2nd class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	ditto	ditto	ditto	Imprisonment of either description for 6 months, or fine, or both.	ditto
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	ditto	ditto	ditto	ditto

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
272	Adulterating food or drink for man, intended for sale, so as to make the same noxious.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Magistrate of the 1st or 2nd class.
273	Selling any food or drink as food and drink for man knowing the same to be noxious.	ditto	ditto	ditto	ditto	ditto
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	ditto	ditto	ditto	ditto	ditto
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	ditto	ditto	ditto	ditto	ditto
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	ditto	ditto	ditto	ditto	ditto
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	ditto	ditto	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health. ...	Shall not arrest without warrant.	ditto	ditto	Fine of 500 rupees. ...	ditto
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	ditto	ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	ditto

280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	ditto	ditto	ditto	ditto	Magistrate of the 1st or 2nd class.
281	Exhibition of a false light, mark, or buoy.	ditto	Warrant.	ditto	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person by water in a vessel in such a state, or so loaded, as to endanger his life.	May arrest without warrant.	Summons.	ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Magistrate of the 1st or 2nd class.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	ditto	ditto	ditto	Fine of 200 rupees.	ditto
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	ditto	ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	ditto
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	ditto	ditto	ditto	Any Magistrate.
286	So dealing with any explosive substance...	ditto	ditto	ditto	ditto	ditto
287	So dealing with any machinery. ...	Shall not arrest without warrant.	ditto	ditto	ditto	Magistrate of the 1st or 2nd class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right, entitling him to pull it down or repair it.	ditto	ditto	ditto	ditto	ditto
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	May arrest without warrant.	ditto	ditto	ditto	Any Magistrate.
290	Committing a public nuisance. ...	Shall not arrest without warrant.	ditto	ditto	Fine of 200 rupees. ...	ditto
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	ditto	ditto	Simple imprisonment for 6 months, or fine, or both.	Magistrate of the 1st or 2nd class.
292	Sale, &c., of obscene books, &c. ...	ditto	Warrant.	ditto	Imprisonment of either description for 3 months, or fine, or both.	ditto
293	Having in possession obscene books, &c., for sale or exhibition.	ditto	ditto	ditto	ditto	ditto

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
294	Obscene songs. ...	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 3 months, or fine, or both.	Magistrate of the 1st or 2nd class.
294A	Keeping lottery office. ...	Shall not arrest without warrant.	Summons.	ditto	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries...	ditto	ditto	ditto	Fine of 1,000 rupees. ...	ditto

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st class.
296	Causing a disturbance to an assembly engaged in religious worship.	ditto	ditto	ditto	Imprisonment of either description for one year, or fine, or both.	ditto
297	Trespassing in a place of worship or sepulture, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	ditto	ditto	ditto	ditto	ditto

298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	ditto	ditto	ditto	ditto

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences affecting Life.

302	Murder. ...	May arrest without warrant.	Warrant.	Not bailable.	Death, transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	ditto	ditto	ditto	Death. ...	ditto
304	Culpable homicide not amounting to murder if act by which the death is caused is done with intention of causing death, &c.	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	ditto
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	ditto	ditto	ditto	Imprisonment of either description for 10 years, or fine, or both.	ditto
304A	Causing death by rash negligent act. ...	ditto	ditto	Bailable.	Imprisonmont of either description for 2 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	ditto	ditto	Not bailable.	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.
306	Abetting the commission of suicide. ...	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
307	Attempt to murder. ...	ditto	ditto	ditto	ditto	ditto
	If such act cause hurt to any person. ...	ditto	ditto	ditto	Transportation for life, or as above.	ditto
308	Attempt to commit culpable homicide. ...	ditto	ditto	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	ditto

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Offences affecting Life.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If such act cause hurt to any person. ...	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
309	Attempt to commit suicide. ...	ditto	ditto	ditto	Simple imprisonment for 1 year, and fine.	Magistrate of the 1st or 2nd class.
311	Being a thug. ...	ditto	ditto	Not bailable.	Transportation for life, and fine.	Court of Session.

Of the causing of Miscarriage; of injuries to unborn children; of the exposure of infants; and of the concealment of births.

312	Causing miscarriage. ...	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child. ...	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
313	Causing miscarriage without woman's consent.	ditto	ditto	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	ditto
314	Death caused by an act done with intent to cause miscarriage.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
	If act done without woman's consent. ...	ditto	ditto	ditto	Transportation for life, or as above.	ditto

315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	ditto	ditto	ditto	Imprisonment of either description for 10 years, or fine, or both.	ditto
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	ditto	Bailable.	Imprisonment of either description for 7 years, or fine, or both.	ditto
318	Concealment of birth by secret disposal of dead body.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
	Of Hurt.					
323	Voluntarily causing hurt. ...	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
325	Voluntarily causing grievous hurt. ...	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
326	Voluntarily causing grievous hurt by dangerous weapons or means.	ditto	ditto	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, or Magistrate of the 1st class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	ditto	Warrant.	ditto	Imprisonment of either description for 10 years, and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt.	ditto	ditto	ditto	ditto	ditto
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	ditto

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Of Hurt.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	ditto	ditto	Not bailable.	Imprisonment of either description for 10 years, and fine.	ditto
332	Voluntarily causing hurt to deter public servant from his duty.	ditto	ditto	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	ditto	ditto	Not bailable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	ditto	Summons.	Bailable.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	ditto	ditto	ditto	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
336	Doing any act which endangers human life or the personal safety of others.	ditto	ditto	ditto	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.

337	Causing hurt by an act which endangers human life, &c.	ditto	ditto	ditto	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Magistrate of the 1st or 2nd class.
338	Causing grievous hurt by an act which endangers human life, &c.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	ditto

Of wrongful Restraint and wrongful Confinement.

341	Wrongfully restraining any person. ...	May arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person. ...	ditto	ditto	ditto	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Magistrate of the 1st or 2nd class.
343	Wrongfully confining for 3 or more days.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
344	Wrongfully confining for ten or more days.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	ditto	ditto	Imprisonment of either description for 2 years, in addition to imprisonment under any other Section.	ditto
346	Wrongful confinement in secret. ...	May arrest without warrant.	ditto	ditto	ditto	ditto
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	ditto
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	ditto	ditto	ditto	ditto	Court of Session, or Magistrate of the 1st class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Of Criminal Force and Assault.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant.	ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	ditto	ditto	ditto	ditto	ditto
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	ditto	ditto	ditto
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant.	Not bailable.	ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	ditto	ditto	Bailable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	ditto
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	ditto	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	ditto

Of Kidnapping, Forcible Abduction, Slavery, and Forced Labour.

363	Kidnapping. ...	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the 1st class.

364	Kidnapping or abducting in order to murder.	ditto	ditto	ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	ditto	ditto	ditto	ditto	ditto
368	Concealing or keeping in confinement a kidnapped person.	ditto	ditto	ditto	Punishment for kidnapping or abduction.	ditto
369	Kidnapping or abducting a child with intent to take property from the person of such child.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	ditto	Bailable.	ditto	ditto
371	Habitual dealing in slaves. ...	May arrest without warrant.	ditto	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	ditto
372	Selling or letting to hire a minor for the purpose of prostitution.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	Court of Session, or Magistrate of the 1st class.
373	Buying or obtaining possession of a minor for the same purpose.	ditto	ditto	ditto	ditto	ditto
374	Unlawful compulsory labour. ...	ditto	ditto	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

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Of Rape.

376	Rape. ...	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Of Unnatural Offences.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
377	Unnatural offences. ...	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.

Of Theft.

1	2	3	4	5	6	7
379	Theft. ...	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent, or vessel. ...	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
381	Theft by clerk or servant of property in possession of master or employer.	ditto	ditto	ditto	ditto	Court of Session, or Magistrate of the 1st or 2nd class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	ditto	ditto	ditto	Rigorous imprisonment for 10 years, and fine.	Court of Session.

Of Extortion.

384	Extortion. ...	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
	Extortion by putting a person in fear of death or grievous hurt.	ditto	ditto	Not bailable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
	If the offence threatened be an unnatural offence.	ditto	ditto	ditto	Transportation for life. ...	ditto
389	Putting person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
	If the offence be an unnatural offence. ...	ditto	ditto	ditto	Transportation for life. ...	ditto

Of Robbery and Dacoity.

392	Robbery. ...	May arrest without warrant.	Warrant.	Not bailable.	Rigorous imprisonment for 10 years, and fine.	Court of Session or Magistrate of the 1st class.
	If committed on the highway between sunset and sunrise.	ditto	ditto	ditto	Rigorous imprisonment for 14 years, and fine.	ditto
393	Attempt to commit robbery. ...	ditto	ditto	ditto	Rigorous imprisonment for 7 years, and fine.	ditto

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—*continued.*

Of Robbery and Dacoity—continued.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session, or Magistrate of the 1st class.
395	Dacoity. ...	ditto	ditto	ditto	ditto	Court of Session.
396	Murder in dacoity. ...	ditto	ditto	ditto	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	ditto
397	Robbery or dacoity with attempt to cause death or grievous hurt.	ditto	ditto	ditto	Rigorous imprisonment for not less than 7 years.	ditto
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	ditto	ditto	ditto	ditto	ditto
399	Making preparation to commit dacoity. ...	ditto	ditto	ditto	Rigorous imprisonment for 10 years, and fine.	ditto
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	ditto	ditto	ditto	Transportation for life, or as above.	ditto
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	ditto	ditto	ditto	Rigorous imprisonment for 7 years, and fine.	ditto
402	Being one of five or more persons assembled for the purpose of committing dacoity.	ditto	ditto	ditto	ditto	ditto

	Of Criminal Misappropriation of Property.					
403	Dishonest misappropriation of moveable property or converting it to one's own use.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.
405	If by clerk or person employed by deceased.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
	Of Criminal Breach of Trust.					
406	Criminal breach of trust. ...	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the 1st class.
408	Criminal breach of trust by a clerk or servant.	ditto	ditto	ditto	ditto	Court of Session, or Magistrate of the 1st or 2nd class.
409	Criminal breach of trust by public servant, or by banker, merchant, or agent, &c.	Shall not arrest without warrant.	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, or Magistrate of the 1st class.
	Of the Receiving of Stolen Property.					
411	Dishonestly receiving stolen property, knowing it to be stolen. ...	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	ditto	ditto	ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—*continued.*

Of the Receiving of Stolen Property—continued.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
413	Habitually dealing in stolen property. ...	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
	Of Cheating.					
417	Cheating. ...	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the 1st or 2nd class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
419	Cheating by personation. ...	ditto	ditto	ditto	ditto	ditto
420	Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the 1st class.
	Of Fraudulent Deeds and Dispositions of Property.					
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.

422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	ditto	ditto	ditto	ditto	ditto
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	ditto	ditto	ditto	ditto	ditto

Of Mischief.

426	Mischief. ...	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	ditto	Warrant.	ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
428	Mischief by killing, poisoning, maiming, or rendering useless, any animal of the value of 10 rupees or upwards.	ditto	ditto	ditto	ditto	ditto
429	Mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	ditto	ditto	ditto	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	May arrest without warrant.	ditto	ditto	ditto	ditto
431	Mischief by injury to public road, bridge, river, or navigable channel, and rendering it impassable or less safe for travelling, or conveying property.	ditto	ditto	ditto	ditto	ditto
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	ditto	ditto	ditto	ditto	ditto

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—*continued.*

Of Mischief—continued.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a land-mark fixed by public authority.	Shall not arrest without warrant.	ditto	ditto	Imprisonmont of either description for 1 year, or fine, or both.	Magistrato of the 1st or 2nd class.
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards.	May arrest without warrant.	ditto	ditto	Imprisonment of either description for 7 years, and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	ditto	ditto	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	ditto
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
438	The mischief described in the last Section when committed by fire or any explosive substance.	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	ditto
439	Running vessel ashore with intent to commit theft, &c.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
440	Mischief committed after preparation made for causing death or hurt, &c.	ditto	ditto	ditto	Imprisonment of either description for 5 years, and fine.	ditto

Of Criminal Trespass.

447	Criminal trespass. ...	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass. ...	ditto	Warrant.	ditto	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	ditto
449	House-trespass in order to the commission of an offence punishable with death.	ditto	Summons.	Not bailable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
451	House-trespass in order to the commission of an offence punishable with imprisonment.	ditto	ditto	Bailable.	Imprisonment of either description for 2 years, and fine.	Any Magistrate.
	If the offence is theft. ...	ditto	ditto	Not bailable.	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	ditto	ditto	ditto	ditto	ditto
453	Lurking house-trespass or house-breaking.	ditto	ditto	ditto	Imprisonment of either description for 2 years, and fine.	Magistrate of the 1st or 2nd class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.
	If the offence is theft. ...	ditto	ditto	ditto	Imprisonment of either description for 10 years, and fine.	ditto
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	ditto	ditto	ditto	ditto	Court of Session, or Magistrate of the 1st class.
456	Lurking house-trespass or house-breaking by night.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—*continued.*

Of Criminal Trespass—continued.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 5 years, and fine.	Court of Session, or Magistrate of the 1st or 2nd class.
	If the offence is theft. ...	ditto	ditto	ditto	Imprisonment of either description for 14 years, and fine.	ditto
458	Lurking house-trespass or house-breaking by night after preparation made for causing hurt, &c.	ditto	ditto	ditto	ditto	Court of Session, or Magistrate of the 1st class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	ditto	ditto	ditto	ditto	ditto
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	ditto	ditto	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

465	Forgery ...	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of Justice or of a Register of Births, &c., kept by a public servant.	ditto	ditto	Not bailable.	Imprisonment of either description for 7 years, and fine.	ditto
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	ditto
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	ditto	ditto	ditto	ditto
468	Forgery for the purpose of cheating. ...	Shall not arrest without warrant.	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	ditto	ditto	ditto	Imprisonment of either description for 3 years, and fine.	ditto
471	Using as genuine a forged document which is known to be forged.	ditto	ditto	ditto	Punishment for forgery. ...	ditto
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	ditto	ditto	ditto	ditto
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under Section 467 of the Indian Penal Code; or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	ditto	ditto	Transportation for life, or imprisonment of either description for 7 years, and fine.	ditto
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under Section 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS—*continued.*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If the document is a valuable security or will.	ditto	ditto	ditto	Transportation for life, or as above.	ditto
475	Counterfeiting a device or mark used for authenticating documents described in Section 467 of the Indian Penal Code, or possessing counterfeit marked material.	ditto	ditto	ditto	ditto	ditto
476	Counterfeiting a device or mark used for authenticating documents other than those described in Section 467 of the Indian Penal Code, or possessing counterfeit marked material.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	ditto	ditto	ditto	Transportation for life, or imprisonment of either description for 7 years, and fine.	ditto
	Of Trade and Property-Marks.					
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of eihter description for 1 year, or fine, or both.	Magistrate of the 1st or 2nd class.

483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	ditto
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	ditto	Summons.	ditto	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the 1st class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	ditto
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	ditto	ditto	ditto	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the 1st or 2nd class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	ditto	ditto	ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the 1st or 2nd class.
488	Making use of any such false mark. ...	ditto	ditto	ditto	ditto	ditto
489	Removing, destroying, or defacing any property-mark with intent to cause injury.	ditto	ditto	ditto	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the 1st or 2nd class.

CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Magistrate of the 1st or 2nd class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind, or disease, and voluntarily omitting to do so.	ditto	ditto	ditto	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	ditto

CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Magistrate of the 1st or 2nd class.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

1	2	3	4	5	6	7
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
494	Marrying again during the lifetime of a husband or wife.	ditto	ditto	Bailable.	Imprisonment of either description for 7 years, and fine.	ditto
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	ditto	ditto	Not bailable.	Imprisonment of either description for 10 years, and fine.	ditto
496	A person with fraudulent intention going through the ceremony of being married knowing that he is not thereby lawfully married.	ditto	ditto	ditto	Imprisonment of either description for 7 years, and fine.	ditto

497	Adultery. ...	ditto	ditto	Bailable.	Imprisonment of either description for 5 years, or fine, or both.	ditto
498	Enticing or taking away or detaining with a criminal intent a married woman.	ditto	ditto	ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the 1st or 2nd class.

CHAPTER XXI.—OF DEFAMATION.

500	Defamation. ...	Shall not arrest without warrant.	Warrant.	Bailable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
501	Printing or engraving matter knowing it to be defamatory.	ditto	ditto	ditto	ditto	ditto
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	ditto	ditto	ditto	ditto	ditto

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	ditto	ditto	Not bailable.	ditto	Magistrate of the 1st or 2nd class.
506	Criminal intimidation. ...	ditto	ditto	Bailable.	ditto	ditto

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE—*continued.*

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If threat be to cause death or grievous hurt, &c.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	ditto	ditto	ditto	Imprisonment of either description for 2 years, in addition to the punishment under above Section.	ditto
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	ditto	ditto	ditto	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the 1st or 2nd class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	ditto	ditto	ditto	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the 1st class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	ditto	ditto	ditto	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII.—OF ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with transportation or imprisonment and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

	If punishable with death, transportation, or imprisonment for 7 years or upwards.	May arrest without warrant.	Warrant.	Not bailable.	....	According to the provisions of Section 8 of this Code.
	If punishable with imprisonment for 3 years and upwards, but less than 7.	ditto	ditto	ditto	....	
	If punishable with imprisonment for less than 3 years.	Shall not arrest without warrant.	Summons.	Bailable.	....	
	If punishable with fine only. ...	ditto	ditto	ditto	....	

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